Vol. III

TRANSCRIPT OF RECORD

(Pages 837 to 1252)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 48

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

No. 64

UNIVERSAL OIL PRODUCTS COMPANY,
PETITIONER,

vs.

ROOT REFINING COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED { MARCH 26, 1945.
APRIL 23, 1945.

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No. 1080

IN THE

United States Circuit Court of Appeals

FOR THE THIRD CIRCUIT.

Nos. 5648, 5546.

ROOT REFINING COMPANY,
Defendant-Appellant,

vs.

UNIVERSAL OIL PRODUCTS COMPANY,
Plaintiff-Appellee.

TRANSCRIPT OF RECORD

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Q. And you didn't discuss with Mr. Halle in any way anything about the Root case, just said, "How do you do?" A. Yes.

Q. Now, when did you next contact Mr. Halle, if you remember? A. Well, I met him once or twice between that time and the time I came over to discuss my fees with him.

Q. You met him personally? A. Yes.

Q. Do you remember when you met him personally on those other occasions? A. Well, I know that the Judge and I, Judge Haight and I had some matters together and he would use the office of the Universal Oil Company to do some work for himself, I think, but I know he did it in my case, 2510
he would call me up, my office was only a few blocks from the Universal, and I would go over to see him. I know—I know it was three or four months after that that I went in, and while we were discussing some matter, I can't recall what it was, Mr. Halle came in, and evidently Mr. Halle had—didn't know who I was, and he says—after he shook hands with him, he said, "You know Mr. Kaufman."

He says, "Oh, yes, yes.", and he shook hands, and at that time he said something to Mr.—to Judge Haight, and he walked out.

Q. Do you remember when that was? A. It was in the—I imagine it was—it may have been in May, or April, or 2511
June, somewheres around there,——

Q. Of what year? A. —I can't recall—the following year, that would be in '35.

Q. Now, that is one of the occasions that you say, you say you met him several times. Now, do you remember when you next met him personally? A. Well, I met him many times, but I don't recall whether it was before we discussed the fee——

Q. Yes. A. —or after we discussed the fee.

Q. Let's put it the time before you discussed the fee. A. I don't recall. I may have met him once or twice. I don't

recall, to be absolutely frank with you, I don't really recall the number of times I met the man.

Q. Before you discussed the fee with him? A. Yes, I met him many times after I discussed the fee.

Q. Well, how many times would you say you met him before you discussed the fee? A. Well, let's see,——

Mr. Harris: You mean, including telephone calls?

Mr. Thiess: No, personally.

A. (Continued) Oh, personally—well, I would say—I can't
2513 recall all the incidents just now, I may have met him once at some other time, I can't recall. Those are two distinct times that I can recall. Now, it may be that I met him once after that under the same circumstances, but I can't—I can't be positive about it, I am not sure about it. I used to go over and see the Judge a great deal about some matters that we had, over at the Universal.

By Mr. Thiess:

Q. Well, how many times would you say you went over to see Judge Haight at the Universal office? A. You mean at all times?

2514 Q. No, before—— A. That is what I say, I am not certain as to that, and it would only be a guess on my part. I can't recall of anything just now, but it may have been I was over there once—it may be possible that I was there once more than the times I have mentioned.

Q. Do you remember what matters you had in common with Judge Haight prior to January of 1935? A. Well, I had two or three or four matters with him. Now, as to the time, I would have to get my records to show which was which.

Q. Well, do you know, have you any idea of what those matters were? A. I can't—I know the names of the cases,

some of them, but I can't recall which, which was at that time, or which was before, or which was after.

Q. Well, could you—— A. If I had my records here I could tell, possibly.

Q. Well, could you give us the names of the cases? A. Well, I know that I had the Kelly Springfield case with him. I know that I had the—let's see—that I had a case from Reading, Pennsylvania with him. I was interested in a large receivership that we were about to file in New Jersey, that we didn't file, that we were consulting on. I can't give you all of them just now. This is all a matter of eight years, I just can't recall the names. 2516

Q. Well, do you remember a telephone conversation that you had with Mr. Halle about your fees? A. A telephone conversation about fees?

Q. Yes, with Mr. Halle. Did you have one? Do you remember that? A. You mean a discussion of fees over the telephone?

Q. No, a telephone conversation that you had with him in which you said you would like to discuss fees with him. A. I doubt very much if I ever made—made a statement that I would like to discuss fees with him over the telephone.

Q. Not over the telephone. A. Well, I mean to even use the word "discuss fees". I might have said, "I would like to come over to see you and discuss a matter with you", but I doubt very much if I would ever discuss the word "fees" over the telephone. Now, it may be possible that I did, but I doubt it very much. 2517

Q. How did you make your arrangement with Mr. Halle to discuss the question of your fees? A. I called him on the phone, my recollection is, and I said to him that I would like to come over and talk to him. Now, that is my best recollection as to what I said to him at the time.

Q. And do you remember when that was? Can you place it at all? A. Well, when is that check dated, was that in '32—I mean, '35?

Q. '35. A. What time in '35?

Q. October.

Mr. Neuman: 18th.

Mr. Thiess: 18th.

The Witness: Well, I should say maybe it was—it was between the time that the Supreme Court—that the petition was filed in the Supreme Court and before it was decided. Now, it was in between that time, or between that time and the check was given to me, now, whatever date—I can't recall the exact
2519 date, but one of those dates would fit in, because there was—I can tell you better because there was something discussed about the Supreme Court at that time.

By Mr. Thiess:

Q. Would it be in December of that year? A. What year——

Q. September. A. September, it may have been in September of that year.

Q. Yes. A. I think that is correct.

Q. Now, do you remember, with respect to this telephone
2520 conversation we were just talking about, that you tried to get Judge Haight first and that he was away? A. Yes, I think I recall now, I think I tried to get Judge Haight on the phone and they said he was out of town, or not back, or—I don't know what happened to him.

Q. And about right after that did you go on your vacation, do you remember? A. No, it was in September, I don't recall that I went—I may have, but I doubt it.

Q. Weren't you on your vacation in August and September of that year? A. Of '35?

Q. Yes. A. Well, I have a vacation a great deal of the time, I don't know what you call a vacation with me. I con-

sider going over to New York a vacation. Some people don't consider it that.

Q. Well, I would like to call your attention to your Grand Jury testimony in New York.

Mr. Theiss: I will give them the page; what is that page?

Mr. Neuman: About 822.

Mr. McCullough: I will try to pick it up.

Mr. Theiss: All right.

2522

By Mr. Theiss:

Q. "Did you ever have any consultation with respect to the case after that time?"—that is, referring to the Root case. "A. No. After the case was affirmed I called up Judge Haight, and he was out of town. I think he was on a vacation, or in Europe, I don't know where he was. Then I called up Mr. Halle, who was the president of the company.

"Q. How long after the affirmance of the case, sir? A. I think it must have been some time in September. I called him up when I got back there, maybe a week later around the early fall, I would say September.

2523

"Q. Did you follow the progress of that particular case? A. Oh yes."

Do you remember that? A. Yes. I still don't know what—how that is inconsistent with my statement here.

Q. Well, that is to the effect that you did call him sometime in September. A. But I said that, I said I had called him in September. It must have been in September.

Q. And this, do you know what you meant when you said in answer to the question:

2524 *Morgan S. Kaufman—For Amici Curiae—Direct*

"Q. How long after the affirmance of the case, sir?", you said: "A. I think it must have been some time in September. I called him up when I got back there, maybe a week later around the early fall,——"

A. Well, I may have been up in my other office at Scranton at that time. I was still the United States referee in bankruptcy, and I spent some time up there to take care of my work there, and went back to New York as receiver for the S. W. Straus Company. See, I had been the United States referee in bankruptcy there for a great many, twenty-three
2525 years,——

Q. Yes. A. —for that section of the country, and I had to look after my matters there, and then when I got back I looked after the matters here.

Q. Now, with respect to these two personal conferences that you had with Mr. Halle, prior to the time that you went to his office and discussed fees, you have never referred to those personal conferences before in any of your testimony, have you? A. Which personal conferences do you mean?

Q. With Mr. Halle, prior to the time that you went to see him in this office to discuss fees. A. I never went there——

2526 Q. The personal conferences that you have talked about, that you met—I mean to say, the time that you met Halle personally, in May and June of 1935, and the time that you saw him in December of 1934, now, you have never referred to that before, have you? A. Well, was that question ever asked me?

Q. Well, I just—no, but—— A. Well, if they didn't ask me I certainly couldn't—you know, you know as a lawyer, you don't—as a witness, you direct a witness never to volunteer anything, you know that as well as I do.

Q. That is correct, but you have—— A. When you have a United States Attorney, and five of them or six of them,

batting this thing at you and that thing, and the Grand Jury batting at you, you are lucky you are out of there alive, if you have ever been before one of them.

(The witness made an additional statement.)

The Witness: Pardon me, that is off the record, if I may eliminate it.

The Master: I don't think it is material, unless you want it.

Mr. Thiess: I don't think it is material.

By Mr. Thiess: 2528

Q. Mr. Kaufman, you were asked about this meeting in New York and your contacts with Halle. Now, nothing has ever been said by you before, that you personally contacted Halle prior to the time that you went to see him to talk to him about your fees, isn't that correct? A. Does the statement say that?

Q. That is what I am——. A. If they asked me the question I would have answered it. If they didn't ask me the question I didn't volunteer anything, if that is what you mean. I don't know what you have in mind by asking me that question.

Q. Was your attention called at all to Mr. Halle's diary 2529
that has been introduced into this case? A. No, sir.

Q. No dates were shown? A. No dates were ever shown.

Mr. Harris: Mr. Thiess, you can rest assured we neither showed Mr. Kaufman the testimony nor Mr. Halle's diary, nor discussed that with him.

Mr. Thiess: O. K.

By Mr. Thiess:

Q. Well, now, you made a telephone appointment with Mr. Halle, as I understand it, to discuss your fees. That is correct, is it not? A. Correct.

2530 *Morgan S. Kaufman—For Amici Curiae—Direct*

Q. And after that you went to see Mr.—— A. Well, now, wait a minute, I didn't make a discussion, now, with reference to fees, I simply made an appointment with him to come over and see him.

Q. Well, you had i mind discussing your fees—— A. Yes, sir.

Q. —when you went? A. I did.

Q. And then did you subsequent to that telephone appointment go to see Mr. Halle? A. I did.

Q. And do you remember when you did go to see him? A. The date?.

2531

Q. Yes. A. No, I fixed——

Q. To discuss the matter. A. I fixed the date a few minutes ago between the time that a petition for a certiorari to the Supreme Court was pending and subsequent to the time—prior to the time it came down, the refusal or denial.

Q. That is the closest you can fix it? A. That is the closest I can get to it, and I only know that because of the conversation at that time.

Q. Now, will you give us the substance of the conversation that you had with Mr. Halle at that time? A. Well, I went over there and we had a few pleasantries there, and he seemed to be very much elated about the outcome of the Root

2532

case, and after talking with him for, oh, five or ten minutes, about different matters, the Root case and a few other things, I said, "Mr. Halle, I came over here to discuss my fees in this case."

He said, "Yes." I remember very well he was tapping on his desk, and he says, "How long have you been retained in this case?"

I said, "Well, I would say about three and a half years."

He says, "What is your thought in the matter?"

Well, I thought—I knew beforehand, of course, but I thought a while. I said, "Well, my—I think that my retainer ought to be ten thousand dollars a year."

And he thought a while, didn't say much for a few seconds, he says, "You know, we have some matters in Pennsylvania that we intend to retain you on, I guess Judge Haight has talked to you about it".

Q. Had Judge Haight talked to you about it at that time? A. I think he had—and he said, "And I think Mr. Belknap discussed it with you, also."

I said, "Yes, I remember Mr. Belknap talking to me about."

And he said, "Well, now," he said; "in view of the fact that we are going to have you as our counsel in Pennsylvania on other matters, on a great many matters, I would suggest, 2534
or I would recommend a fee of twenty-five thousand dollars, provided that the case which is now in the Supreme Court of the United States, there is a petition for certiorari, if that certiorari is refused," he says, "my lawyers advise me that they haven't a leg to stand on", he was very positive,——

By Mr. Harris:

Q. That they—his lawyers? A. His lawyers.

Q. You mean that they—— A. In fact, he did himself, and he says, "And I know it, personally."

Q. By "they" you mean his lawyers, or his adversaries haven't a leg to stand on? A. Oh, his lawyers advised me 2535
that the Root case hadn't a leg to stand on. What did I say?

Q. You said that his lawyers advised that they didn't have a leg to stand on. A. No, I meant they, that the Root people hadn't a leg to stand on. That was substantially——

The Master: That always means the other.

The Witness: I didn't say much, but I do think he said that he is satisfied personally that they didn't have a leg to stand on, if you want it, I really think that is what he said, because he is very positive, Mr. Halle is very positive in his statements, so that was

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substantially the statement that I made there and that he made to me.

By Mr. Thiess:

Q. And at that conference was anything said about whether any fee had been mentioned by Belknap, and did you tell him that you remembered that none had been, that you had no recollection of Belknap mentioning a fee? A. I can't recall now that I said anything about any particular fee that Belknap mentioned. I won't say that I didn't, I
2537 just can't recall. This is the high spots of what I recall that took place in that conversation. I don't mean to say that was all that took place.

Q. Well, now, was anything said to you respecting the fee you were to get in the Root case if certiorari should be granted? A. No.

Q. That was not discussed at all? A. No.

Q. There was no discussion about it? A. No, sir.

Q. Wasn't that part, something that was to be considered here, at the time that you were discussing fees? A. That I was to consider?

Q. Yes, wasn't that part, something that should be discussed as far as your fees are concerned, as to what you were
2538 to get,—— A. Well, he said——

Q. —if certiorari was granted or if certiorari was not granted? A. He didn't discuss that. He said, "If the certiorari is denied I will recommend twenty-five thousand dollars." That is the exact words he used, if I am not mistaken.

Q. And never said anything of what he would pay you if certiorari was denied—granted, I meant to say? A. No, I think I would have modified my fee very materially if we had lost the case.

Q. Well, you did modify it somewhat, in view of what you asked for. A. I didn't modify it, he modified it for me.

Q. Well, you accepted—— A. I modified it the other way.

Q. Yes, you accepted it, did you not, you accepted the reduction?

Mr. Harris: Then and there, you mean, on that occasion?

By Mr. Thiess:

Q. Did you accept it then and there? A. I didn't really accept it, I sort of smiled and left the matter, held the matter, assuming that that would be all right.

Q. And ultimately you did accept the twenty-five thousand dollars; is that correct? A. I took the check for twenty- 2540
five thousand dollars as of that date.

Q. And did you consider the payment that you were to get in this other litigation in Pennsylvania as part of the consideration of the Root case? A. No.

Q. You did not? And was this other litigation that you have referred to, which you might be called into in Pennsylvania, discussed as to what it was, at that time? A. I think he told me that—something about—he seemed to be very, very bitter against the—I think he used the word Cities Service, instead of the Cities Service Company, "We will have to go after those men," he says, "we will have to go after that company", and he seemed to—he seemed to 2541
think that someone had fallen down on the job, to be frank with you, there was too much delay for him.

Q. Now, at the time that you discussed this fee with Mr. Halle, did you say anything to him that you would like to get the fee as soon as possible, or were you pressing payment of the fee? A. I don't recall that I said that.

Q. I am asking your whether you did press the payment of the fee. A. I don't recall that I said that. I very—I would hesitate before I would ever say—make a statement—I may have said it, but I doubt it very much.

Q. Did you tell Mr. Halle that you would like your money immediately after certiorari was denied, if it was

denied? A. I don't think I said it. I might have said something that—along that line, but nothing that would mean that I needed the money, because, as a matter of fact, I can always use money when the—I could use money, I might have said that, but I never was in want of money, so far as getting along was concerned. It wasn't a case of where I had to have it.

Q. Now, at the time that this twenty-five thousand dollar fee was fixed was any agreement made as to what you were to be paid for the subsequent years? A. Why, from what
2543 he told me at that time, whether it was an inducement or not I don't know, but he told me that my fee would be a retainer of ten thousand dollars a year. Now, whether he told it to me at that time, or the time he gave me the check, I am not sure about it, because that was a difference of several weeks, whether two weeks or three weeks, now, whether he told it to me on that day or the day he gave me the check I am not sure today, but he told it to me on one of those two occasions.

Q. And on one of these two occasions did he tell you that you would be general counsel for the Universal for Pennsylvania? A. Well, now, I don't know whether he used that exact word. That would be my expression, as general
2544 —because they had no other counsel in Pennsylvania.

Q. Well, was that the first time that you were to be so considered? A. Did he say that, do you mean?

Q. Yes. A. I don't think he used that.

Q. Well,—— A. I think I used that.

Q. Well, was that the first time that you thought that you were to be retained as general counsel for Pennsylvania, as you considered it? A. Well, I can't tell you what thought was in my mind at that time, I may have, I don't know. If I said it, why, it would be in my mind, and not in Mr. Halle's mind.

Q. Well, when was it that you first considered that you had been retained as general counsel for Pennsylvania for the Universal Oil Products Company? A. Well, I thought I had been retained as general counsel, not only in Pennsylvania, way back in 32, because they had no other lawyer in Pennsylvania, they told me so.

Q. Well, was anything said to you at that time that you were to be general counsel for Universal? A. Well, I understood it from—from Mr. Belknap, that they had no other counsel in Pennsylvania, anything came up around here, why I was to look after, and I assumed by that that I was 2546
their general counsel in Pennsylvania, and I have used that expression.

Q. Well, now, this agreement with respect to the payment for subsequent years that was made between you and Mr. Halle at that meeting, was that put in writing,— A. No.

Q. —or was it merely an oral agreement? A. Oral agreement.

Q. And these payments that were to be made subsequently at the rate of ten thousand dollars a year were to be made to you as general counsel for Pennsylvania, is that correct? A. As counsel—well, as what I considered general counsel, as I say, as attorney for the Universal Oil Products.

Q. Well, when you testified before the Grand Jury do 2547
you remember that you described this retainer as a retainer of general counsel for Pennsylvania for the Universal Oil Products Company? Do you remember that? A. I beg your pardon, what —

Q. Do you remember that when you were testifying before the Grand Jury you described this retainer by the Universal as retainer as general counsel for Pennsylvania for the Universal Oil Products Company? A. I may have, I may have, it was my own expression, I may have done that.

Q. Was it your understanding at the time that you made this agreement with Mr. Halle with respect to the ten thou-

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sand dollar a year retainer that you were to get this fee whether or not any suits were being filed in Pennsylvania? A. Well, I knew suits were to be filed, they directed me to file—he said that suits would be filed.

Q. Well,—— A. In fact, right after that we did start filing our suits.

Q. Was it your understanding that you were to get that ten thousand dollars whether suits were filed or not? A. Well, I didn't have any understanding of that kind. I understood that my fee was to be ten thousand dollars a year, and that they intended to bring these suits.

2549 Q. And you were to get that ten thousand dollars whether you did any work on the suits or not, is that correct? A. No, I wouldn't say that is correct.

Q. Well, it was a retainer for ten thousand dollars—— A. That is right.

Q. —a year, was it not? A. That is right, a retainer for ten thousand dollars.

Q. And you would get that ten thousand dollars as retainer whether you did any work or not, would you not? A. Well, I say, it was thoroughly understood that they were to bring these suits and I was to get ten thousand dollars a year. They were not only going to bring one, but they were

2550 going to bring several suits.

Q. But if there had been any delay in bringing the suits you would have gotten your ten thousand dollars just the same, would you not? A. I think so—at least, it was my understanding. Whether it was his, I don't know.

Q. Now, as I understood your testimony, the twenty-five thousand dollar fee that you got in the Root case was not to be paid until everything was O. K. with the Supreme Court, is that correct? A. That is correct, until the—he said that they would have to wait until the—what action, what action of the Supreme Court of the United States, and if that is denied, if the certiorari was denied——

2551

Q. So the payment of the twenty-five thousand dollars was delayed until you got that action from the Supreme Court? A. Well, now, I don't know the exact date. If you say that the check is dated subsequent to the date of the date of the Supreme Court decision,——

Q. That is right. A. —that would be correct.

Q. O. K., that is correct. A. That is the only way I would remember that.

Q. The receipt is dated afterwards, I would say. A. I beg your pardon?

Q. The receipt is dated afterwards. You got the check—— A. I got the check——

2552

Q. —after the decision by the Supreme Court denying—— A. I assume that the decision had been rendered; yes. I can't recall now what date that was.

Q. And am I correct in saying that your payment was delayed until that decision was to come down? A. Well, I don't know whether you would say the word "delayed", but it was not to be given to me, I asked for it beforehand, but it was not delivered to me until the decision was handed down, that is correct.

Q. Now, I wish to show you Amici Exhibit 8, which is a photostatic copy of your receipt. Is this in your handwriting?

2553

(The witness examined Amici Exhibit 8.)

A. It is.

By Mr. Thiess:

Q. Do you know when you delivered this receipt to him? A. I delivered this receipt on the date it was—it is purported to be dated, and delivered it to Mr. Halle, I think—I am not sure—but I think I gave it to him personally. I think that receipt was signed right in the office.

Q. Yes. A. I haven't seen that receipt, see, this is in '35,——

Q. Yes. A. —'42—what is today, October 22nd?
Q. That is right.

Mr. Harris: 27th.

The Witness: 27th, well, it is just seven years. I signed that receipt right in the office there.

By Mr. Harris:

Q. The Universal office? A. The Universal office.

By Mr. Thiess:

2555

Q. Do you remember that you received a telephone call from Mr. Halle to come and get your check, or how was that arrangement made? A. Well, I really don't know, I suppose that I got a telephone—I don't remember it now, I assume I got a telephone call to come over there, and I went over, but to tell you that I got the telephone call now would—I couldn't remember that, I don't know. I must have gotten some kind of a call to go over there and get it, but how it was I don't know. I can't recall it.

Q. And—— A. I know that I signed that receipt there at the office on the day of October 22, 1935.

2556

Q. I show you Amici Exhibit 7, which is the check for twenty-five thousand dollars, a photostatic copy of it. Did Mr. Halle give you that check personally? A. I think he did, yes, sir.

Q. Now, when that check was delivered to you by Mr. Halle did it have a remittance slip with it to show what the check was for? A. I don't remember that. I wouldn't have known that I had given him a receipt if you hadn't shown me that, to be absolutely honest with you. I had just forgotten it, that is all.

Q. Now, when Mr. Halle delivered this check to you what, if anything, did he say to you? What was the substance of the conversation? A. I don't think there was much conversa-

tion, he just handed the check to me, and they wanted a receipt for it, and, of course, I gave him a receipt. I don't remember just what they—how—I know I got the check, and I deposited the check on the—on the 28th, I guess, 28th, three days afterwards—23rd, the following day, I deposited the check, yes.

(During the answer the witness examined Amici Exhibit 7.)

By Mr. Thiess:

2558

Q. At that time did you know that certiorari had been denied, or did Mr. Halle tell you of it? A. I don't think there was anything said.

Q. Nothing said about it? A. For my information, will you give me the date that the petition for the certiorari was denied?

Q. October 21st. A. Well, then, that is absolutely correct. I wasn't quite sure, but I am sure now, that that is exactly what happened, that between those two dates is the time that I was there, and the time that he gave me the check was after the certiorari was denied.

Q. Now, it is your present recollection, as I understand it, that you drew this receipt, Amici Exhibit 8, in Mr. Halle's 2559
office, in his presence? A. I couldn't tell you where I drew the receipt. It must have been right in the office.

Q. Yes. Do you remember whether Mr. Behrens was there at that time? A. He was there, but what part, what part he took, or—I remember he came in. Now, what was said or what was done I can't recall for the life of me. I do remember having the check there, and I took the check, and I made out the receipt, and I am glad you showed it to me, because I really—I didn't know that I had given him a receipt.

Q. Do you know who suggested the language of this receipt,—— A. I don't think——

2560 Q. —Amici Exhibit 8? A. I don't think anybody suggested the language. It sounds like my own language.

Q. In other words, you composed that? A. Yes, sir, "for services to Oct. 1—35——". I think that made up the three years and a half, possibly, October——

Q. October to where? A. What?

Q. How do you figure the three years? A. I don't know, I must have figured at that time the years.

Q. That would be from April? A. From about April 1st, 1932, to about October 1st—May, June, July, August, September—that would be about three years and a half.

2561 Q. And is that the way you fix the date of April,—— A. I remember at the time——

Q. —that you met Mr. Belknap? A. —it was either March or April that I was retained, and that is how I happen to fix the date.

Q. I see. Now, do you know why you did not mention the Root case in this receipt, Amici Exhibit 8? A. No, there is no reason for it, they just wanted a receipt and I gave them a receipt, that is all. If they wanted it any different they could have had anything they wanted.

Q. Well the receipt was for the Root case, wasn't it, services in the Root case? A. I suppose so.

2562 Q. Do you know why it was that this receipt, Amici Exhibit 8, covers services only to October 1st, rather than to date, which was October 22nd? A. No reason at all, I just happened to write it up that way. I wouldn't even know now why I wrote it that way. I just said October 1st. If they wanted it to October 22nd I would have done it the same way.

Q. Had anything happened that you know, or intervened between October 1st and October 22nd that was to be excluded from the receipt? A. Not that I——

Q. Now, the receipt, Amici Exhibit 8, does not call for legal services. Do you know why that was omitted? A. I

just—they asked for the receipt and I just gave it to them, that was all. They could have had any kind of a receipt. It only took me—I know I wrote it out myself, they just wanted it, they said, "Give us a simple receipt", or something of that sort, and I gave it to them. I don't recall what was said to them, and I don't recall, I wouldn't recall I gave them a receipt if it hadn't been you showed it to me just now.

Q. Well, the payment was made on the basis of a retainer. Now, do you know why you should not have mentioned the retainer in the receipt? Should that have been in there? 2564
A. Well, there might have been a lot of things in that receipt if they had wanted it. They could have had anything they wanted—a man gives you a check for twenty-five thousand and wants a proper receipt, why, they could have had it. I gave what I thought was a receipt. If they had wanted any different, they could have asked for it, I suppose.

Q. And you just wrote the receipt and gave it to them and they were satisfied, that is correct? A. I don't even remember, I know that is my handwriting, and the receipt was given to them. Now, the particulars of it I don't recall. I don't see the necessity of it, the check was the receipt, as far as I was concerned.

Q. After this receipt was executed and delivered do you 2565
recall that you had any conference with Mr. Halle and Mr. Behrens respecting work for the Universal Oil Products Company? A. With reference to the other cases?

Q. Other work. A. Yes, I had several conferences.

Q. Well, I mean right at this time, at the time that you got the twenty-five thousand dollar check and gave them the receipt,— A. I think—

Q. —was anything mentioned at that time? A. I think Mr. Halle said something to me that we ought to get on these Crew Levick cases right away, and so forth, and get in touch with—get in touch with Behrens, or some—I can't recall what the exact talk was, but there was some talk there.

Q. Did you have a conference that day with either one of them about this additional work? A. My impression is that I did not, at that particular time.

Q. Yes. A. I did subsequently, however.

Q. Now, I show you Amici Exhibit 14, which is a check of the Universal Oil Products Company for ten thousand dollars, and also Amici Exhibit 15, which is the letter of transmittal. A. Yes.

Q. Do you remember receiving that check and letter? A. Yes, I remember receiving that.

Q. Do you remember whether a remittance slip accompanied this check when you received it? A. I couldn't tell you that. I don't think so. I think that is all I received, is a check and a letter.

Q. Well, did you prepare and send to the Universal Oil Company a receipt for this ten thousand dollar check, Amici Exhibit 14? A. I think so. I sent them some letters of—some receipts acknowledging the check, naturally, it came by—it came by mail, I imagine.

Q. Well, do you remember that you did send them a receipt by letter? A. No, I wouldn't remember now.

Q. But—— A. If they have it, it would be on their files, I am sure.

Q. Well, would it have been your ordinary custom to write a letter to them and tell them that you received that check? A. It may have been. I know I did in some cases, and it may be that I neglected it in others. I am not sure.

Q. Now, what contact, if any, did you have with Mr. Halle or any agent or attorney of the Universal Oil Products Company to arrange for the payment of this ten thousand dollars? A. What arrangement? Why, we were—we had started a suit against the Crew Levick Company at that time, in March, 1936. The arrangement was that I was to get a fee of ten thousand dollars. Now, whether I went over to

see Halle, or whether someone came to see me, I can't recall about that. I shouldn't be a bit surprised that I went over to see Halle about this, it may be possible.

Q. You have no recollection—— A. I have no recollection.

Q. Of calling Halle to make arrangements for this? A. I may have; I don't know, it may be—I know I got the check as a retainer for the year '36.

Q. Well, now, as I remember it, the Crew Levick case was filed——

Mr. von Holst: January 30th. 2570

By Mr. Thiess:

Q. —January 30th? A. That is correct.

By Mr. Harris:

Q. January 20th, wasn't it? A. January 20th—it was in January, '36, that the Crew Levick case was filed.

By Mr. Thiess:

Q. Do you recollect why the payment of this ten thousand dollar check was delayed until March? A. Well, there is no reason that I know of. A retainer can be sent any time during a year. They don't usually send it on January, promptly. 2571

Q. Mr. Haile's diary shows an entry by him which reads as follows: March 10, 1936, Morgan Kaufman telephoned. In view of this diary entry and this payment of this check, does that refresh your recollection at all, that you might have called him? A. Yes, the chances are I went over there, and I might have discussed—I might have said to him they neglected or forgot to send my retainer for the year 1936. I might have done it, I can't recall, but that refreshes my recollection that I did go over there, and the connection

between the close dates, between March 10th and March 18th, shows me that I evidently went over there and requested it.

Q. And you very possibly phoned to make the arrangements? A. I may have done that, I may have done that.

Q. Now, as I understand it, this ten thousand dollar check was paid to you as the 1936 retainer as general counsel—— A. That is correct.

Q. —for the Universal Oil Products Company for the State of Pennsylvania, is that correct? A. Well, I wouldn't say for the State of Pennsylvania—for services.

Q. Well, weren't you acting as general counsel for them
2573 in Pennsylvania? A. Well, they had no counsel in Pennsylvania, and I took it upon myself to so label myself, as you might call it counsel in Pennsylvania, but I was retained generally, whether it was counsel in Pennsylvania, or whatever else they needed to do, whatever work they requested me to do, I was willing to do, whether it was in Pennsylvania, or Illinois, or any other section of the country. I wasn't bound by Pennsylvania. I would have been glad to do anything they had.

Q. Well, wasn't the ten thousand dollars for services to be rendered in Pennsylvania? A. I don't think so.

Q. Wasn't that your understanding? A. My understand-
2574 ing is that that was all that I did, as a matter of fact, but I could have—they could have asked me to go to Illinois and assisted in the trial of a case there. If they had wanted me to do it, I would have been very glad to have done it.

Q. Now, this case that was filed in 1936 is this Crew Levick case, is that correct? A. That is correct.

Q. And you were active in this Crew Levick litigation, were you? A. I was somewhat active, yes.

By the Master:

Q. What was the answer? A. Somewhat active.

Mr. Thiess: He said, "somewhat active".

By Mr. Thiess:

Q. To what extent were you active in the Crew Levick litigation? A. Well,——

Q. Did you act as local counsel? A. I acted as the solicitor. I came to Philadelphia numerous times. I fixed dates for hearings, transmitted papers, interrogatories, that were sent to me from time to time, I acted in a number of things there that I can't recall offhand. I haven't any files with me. You have all the files, no doubt, it is in the Government's possession,——

Q. Well,—— A. —And you no doubt have them, photostats. 2576

Q. —the bill of complaint, as we have just said, was filed in the Crew Levick case on January 30, 1936. Did you prepare this bill? A. I did not.

Q. Did you file the bill? A. I did.

By the Master:

Q. What court was it filed in? A. Eastern District, Philadelphia.

Q. Eastern District of Pennsylvania.

2577

By Mr. Thiess:

Q. Now, with whom did you first discuss this Crew Levick litigation, do you remember? A. Yes, I first discussed this, I think, with Judge Haight, and he——

Q. Do you know when? A. No, I couldn't tell you the date.

Q. Was it after the case was filed? A. Oh, before the case was filed.

Q. Was it a long period before or just a short period before the case was filed? A. What date was the case filed, January?

Q. January, yes, of 1936. A. Oh, I would say a month or two, and he advised, on the—I discussed the case with Judge Haight on the question of jurisdiction, a jurisdictional question came up as to where we should file this bill, the Wilmington courts were very busy, they only had one judge at the time, they had very important litigations going on, that would take weeks at a time, and then the question came up whether we ought to file it in the Middle District of Pennsylvania, Scranton.

Then he told me to see whether we could get service on them, things of that sort, so we wrote out there, and I wrote to my office in Scranton, I knew that they had a place of business there, but there was no one upon whom—none of the officers of the Crew Levick resided in and about Lackawanna County, and we—I think there was something came up about Crawford County, and then we wrote to the Secretary of the Commonwealth, I wrote to the Secretary of the Commonwealth—well, suffice to say, we concluded that the only place to file the bill to get quick service on them would be here in Philadelphia, in the Eastern District, and in the meantime I had discussed all these matters, not only with Judge Haight, but with Mr. Behrens, I spent considerable time with Behrens, either part of one day or part of two days, he was——

Q. Do you remember when that was? A. No.

Mr. Harris: I wish you would stop interrupting him. I know it is unintentional, but he frequently does not seem to finish his answers.

Mr. Thiess: I beg your pardon.

The Witness: What did I start to say? I discussed it then with Mr. Behrens, and we had a number of interviews concerning a lot of matters, as to how the case could be brought there, and he outlined the case to me—in fact, I recall how he was rather bitter against the Crew Levick, that they were the

worst infringers of them all, I do recall that he did make that statement, that of all the infringers the Crew Levick were about the worst ones they had, the Empire, which was a subsidiary of the Cities Service, and all that, and then we discussed a great many things about the—I think with Mr. Behrens we discussed a number of other things.

By Mr. Thiess:

Q. Well, now, let me ask you, did you discuss this Crew Levick case with Judge Haight, first? A. I think I first— 2582
yes—well, outside of, first, the talking to Mr. Halle about the case originally.

Q. Yes. A. But he didn't go into any facts or details. The Judge discussed the jurisdictional question,——

Q. Yes. A. —and for me to look after the jurisdictional question.

Q. That was the next sequence of events? A. I think so. I can't tell the sequence, I am giving it to you as I recall it, and the next proposition was to take it up with Mr. Behrens, and I did take it up, and I did take it up with Mr. Behrens, I spent a lot of time over at the Universal office, I think it was part of one day or part of two days 2583
or so.

Q. Do you remember what the purpose of the discussion with Mr. Behrens—— A. Yes, we had a general discussion, first about jurisdiction, again, and about the character of the—he discussed with me the—he had the different patents, the question came up as to whether to sue on one or two or six, I forget what it was all about, and then the question as to the liberality, as to certain courts, as to how they looked upon patents, and what they think of commercial success, and how some judges look upon, whether they are highly technical, and all that, all over the State, and we discussed it in a general way, as two lawyers would discuss these matters.

2584 Q. Did you discuss the Dubbs and Egloff patents? Did you know that the same patents were involved —— A. Yes.

Q. —in the Crew Levick case? A. I think he discussed that with me. He told me at the time that this Egloff, or whatever his name was, he was employed by them and had improved. I think he told me, I may be mistaken about it, that he had made an improvement upon the Dubbs patent. Now, I may be wrong about it, but that is my——

Q. And you knew that the same patents were involved in those two cases? A. I don't know about these two cases.

2585 Q. I mean, so far as those two—— A. We were discussing things generally. I couldn't tell you whether they were involved in this particular case or not,——

Q. You didn't know that? A. —but I imagine from what—that the Dubbs patent was the one—that the Dubbs patent was the one that we sued on, I think. I haven't seen the papers in years.

Q. Now, you have stated that you went to the office of the Universal Oil Products Company in New York a number of times on this Crew Levick case. A. Yes, off and on.

Q. Have you any idea of the dates that you went there? A. No, I couldn't—I had no memorandum and no book in which I kept dates as to going over to the Crew Levick—

2586 to the Universal office.

Q. Well, can you give us a little more definite statement, if you can, as to how many times you went over there,—— A. No.

Q. —if you can't give us the dates? A. I went over there many times. Many times I would be here at the Radio Building for some purpose, and I would drop in.

Q. Well, how many times would you say that was? A. I couldn't say that.

Q. Would you say it was ten, or twenty? A. Oh, it wasn't twenty. I would say possibly—all the times I have been there, you mean?

Q. In connection with this Crew Levick case. A. I would say about six or seven times, five or six times, I can't recall. It may be that many, it may not be that many.

Q. And with whom did you discuss this case besides Mr. Behrens and Judge Haight, if anybody? A. I think we discussed it that day with—if I am not mistaken, the day of the hearing, I think the day that this hearing was held, there was a discussion at which I was present, I don't know whether I would say that I discussed it myself, I think Mr. Thomas appeared in that case before the District Court, he appeared before Judge Welsh on these interrogatories—was that Judge—was that Mr. Thomas? 2588

Q. Yes; that is right, that is correct. A. I am not sure, I wouldn't know him if he came in. I know I spent the day with him, but I can't recall——

Q. Well, did that discussion take place in New York at the Universal offices? A. No; here in Philadelphia.

Q. Well, you see, I had in mind—— A. Oh.

Q. —the discussions at the offices in New York. A. I think in New York the only ones I discussed with is Mr.—Judge Haight and—and Mr. Behrens, and the little discussion I had with Mr. Halle.

Q. And how many times did you say you approximated you went over there to the New York office? A. I can't recall. 2589

Q. Yes. A. My best judgment would be five or six times on that case, maybe more, maybe less.

Q. And on each time do you remember any other discussions that you had on these six or seven times you were over, outside of what you have already said with respect to the Crew Levick case? A. Well, we had the discussion in a case, as you know—you mean the character of the discussion, or what do you mean?

Q. Yes, what was said between the parties, the substance of the conversation? A. The nature of the case, the character, they outlined to me the patents.

Q. Well, how did the—go ahead. A. He had description there, he had outlines, he had a lot of records there, and he was trying to fill me up with a lot of stuff there that—all kinds of assignments from one to another, and all that sort of thing. We had a general discussion, as lawyers would have.

Q. Well, was the discussion of the same character on each one of these meetings, or was there any difference in the discussion on the six meetings that you were there? A. Oh, no, these—you are asking me at the different times I was there, now?

2591 Q. Yes. A. No, I am telling you about a couple or three times I was there with reference to this—with this, what do you call it case——

Q. Crew Levick case? A. Crew Levick case.

Q. Well, that is what I am talking about. A. Yes.

Q. Now, do you remember any other discussions that you had except this one—— A. The only discussion I had of the Crew Levick case was with Mr. Behrens, at the Universal.

Q. That is the only one you had? A. I had it two or three different—on two or three different occasions, and that was before the case had been started, before January 20th—is that the date?

2592 Q. January 30th. A. 30th?

Q. 30th, yes. A. Before January 30th, I was there, on two or three different times, talked to Mr. Behrens about the case.

Q. And then you had no other discussions with him? A. Not with Mr. Behrens, and my other discussion was with—I went over to Judge Haight at the time we drew the petition, and all that.

Q. What petition are you referring to now? A. The bill of complaint.

Q. Were you with Judge Haight when the bill of complaint was drawn? A. I was.

Q. And you assisted in the drawing of the bill of complaint? A. I won't say I assisted, because he dictated it. He knew it forward and backward, but practically copied it out of the Universal-Root case.

Q. And the bill of complaint was dictated by Mr. Haight? A. Practically so.

Q. Was anybody else there when Judge Haight dictated the bill of complaint? A. I don't think so. In fact, he had part of it all prepared, he was reading it over to me.

Q. Now, were you aware of the fact that there was another case pending in the District Court of the United States 2594
for the District of Delaware, entitled Universal Products versus Empire Refineries Company? A. Yes.

Q. Involving the same patents? A. Well, that was a part of the same system. Mr. What's-his-name discussed it with me, Mr. Behrens discussed that case with me, the Empire, as well as the, what-do-you-call-it, but we—this suit was brought, I think, in the State of—the other suit was brought in the State of Delaware.

Q. That is right.

Mr. Thiess: At this time I would like to offer, if the Master please, a certified copy of the docket entries in the case of Universal Oil Products Company versus 2595
Crew Levick, and Universal Oil Products Company versus Empire, as Amici Exhibits 77 and 78.

The Master: Don't these entries include the appearances?

Mr. Harris: It is conceded that Mr. Kaufman was the attorney of record for the plaintiff in the Crew Levick case.

Mr. Neuman: That is right.

Mr. Thiess: One of the attorneys.

Mr. Harris: His name was first on the list.

Mr. Thiess: Yes.

2596 *Morgan S. Kaufman—For Amici Curiae—Direct*

Mr. Harris: I think we marked a copy of the bill in evidence.

Mr. Neuman: He appears as solicitor on the bill and also of counsel.

(Certified copy of docket entries in the matter of Universal Oil Products Co. vs. Crew Levick Company, No. 9287, December Term, 1935, In Equity, In the District Court of the United States for the Eastern District of Pennsylvania, was marked Amici Exhibit 77.)

2597

(Certified copy of docket entries in the matter of Universal Oil Products Company vs. Empire Oil and Refining Company, No. 1162, In Equity, In the District Court of the United States for the District of Delaware was marked Amici Exhibit 78.)

By Mr. Thiess:

Q. Did you assist in any way in the conduct of this litigation involving the Empire Company? A. I did not.

Q. Now, do you know of any other cases during this period that the Universal were interested in, in either Delaware
2598 or Pennsylvania, in 1935 and '6? A. There was a case pending in Delaware, known as the Mid Continent case, and I was only interested in that way, because Mr. Belknap had suggested that case along with this other that was pending, as I recall. Now, in that case, while I was over at one time discussing the Crew Levick case with Judge Haight, he turned to me and he said, "You know, we settled that Mid Continent case some time ago and we got a million dollars in cold cash."

I says, "Didn't that case depend solely upon the Crew Levick—upon the other case,——

By Mr. Harris:

Q. Root case? A. On the Root case.

"Well," he said, "they settled it because we had won the case."

I said, "That is what I mean, they had settled it because you had won the Root case."

He said, "That is right."

I said, "Do you know what settlement I got in my fees in the other case, of the Root with Universal?"

He smiled. He says, "Why, Mr. Halle told me about it."

"Well," I said, "you know, I didn't get my entire fee. He cut ten thousand dollars off of my fee." 260

He says, "So I understand," or something of that sort.

I said, "I now feel that I ought to get that ten thousand dollars. I see no reason why he should eliminate that fee of ten thousand dollars with a million dollars more." I says, "Why don't you take it up with him, Judge, for my sake?"

He says, "No," he says, "you go over there sometime and you take it up with him yourself,—very liberal, very decent", and all that sort of thing.

I says, "All right, I will do that," and so I went over and I discussed it with the old gentleman, Mr. Halle. I said to him—I am glad he isn't here, to tell you he is an old gentleman! 26

Mr. Harris: He will read your testimony.

A. (Continued) So he said, "Yes, sir, we got a million dollars cold cash, and," he says, "I made that settlement myself," he said, "didn't have to have any lawyers in that case, got the settlement through all alone."

"Well," I said, "now, I still think I am entitled to the ten thousand dollars that you deducted."

He thought a while, he says, "Listen," he says, "suppose I send you a check for five thousand dollars, will we call everything square?"

I says, "Absolutely." So he sends me a check for five thousand dollars, and so I got the check, and during the year of 1936, for five thousand dollars. I first took it up with Judge Haight, and I think if Judge Haight would have told me not to go there, I don't think I would have gone there, but he says, "Go ahead and take it up, and you will find he will be very decent, very liberal," and all that.

2603 *By Mr. Thiess:*

Q. Do you know when you took this up with Judge Haight? A. During the time that we were discussing the—what do you call it?—sometime within a month or so from the time I got the check from this fellow, it may have been longer or shorter, I don't know.

By Mr. Harris:

Q. Which check? A. It was around that time.

Q. Which check? A. The check for five thousand dollars.

2604 Q. You said within a month or two of the time you got this check? A. Yes.

Q. Oh, you mean the five thousand? A. The five thousand.

By Mr. Thiess:

Q. In other words, it was a month or two before you got the check that you discussed it with Judge Haight? A. Well, I would say—I don't recall whether it is two months or a month,——

Q. Yes. A. —but it was some time after that.

Q. And how long after you discussed it with Judge Haight did you take it up with Mr. Halle? A. Well, that is what I mean, I took it up the first opportunity I had. I may have gone out of town, I don't recall just the length of time, it may have been a week, two weeks, a month, I don't recall, but the first time I got back, or at the time I called up the Judge and he fixed a date for me, I went over to see him.

Q. Oh, Judge Haight arranged the date—— A. No.

Q. —for you with Mr. Halle? A. No, he didn't.

Q. Well, then—— A. He didn't want to have anything to do with it. He says, "You go over and you face the music." 2606

Q. Oh, you called up Mr. Halle—— A. That is right.

Q —and made a date to come over? A. That is right, either I called him or I went in myself without calling him, dropped in on him.

Q. And that was a short time, you say, after you talked to Judge Haight? A. I can't say how long it was afterwards, it may have been—I can't give you that time, that is indefinite.

Q. And can you give me the substance of your conversation with Mr. Halle at the time?

Mr. Harris: Now, just a moment, I don't know why you want it again. He has given it to you in extenso,—— 2607

The Witness: I have, already.

Mr. Harris: —in detail.

The Witness: I gave it to you in detail, I will repeat, if the stenographer will read it, I will be glad to add anything to it.

By Mr. Thiess:

Q. Well, did you talk, when you went in to see Mr. Halle, you talked only about the five thousand dollars additional

ee? A. I didn't say anything about the five thousand dollar
e, I talked to him about the Mid Continent fee that they
ettled.

Q. All right. A. And I thought that I was entitled to
he ten thousand dollars that he deducted.

Q. Yes. A. And then he told me that he had settled the
ase himself, he got a million dollars cold cash without the
elp of any lawyers, he said, didn't need any damned law-
ers in the case, or something like that. I don't know whether
e used the word "damned", or whatever it was, but he told
e that he settled that case himself and he got a million
ollars cold cash in that case.

Q. And that is the only thing you talked to him about
t that time? A. Was the ten thousand dollars.

Q. And there wasn't anything else discussed with Mr.
Ialle at that time except this ten thousand dollar fee,
hich you settled for five thousand? A. I think that is right.
ow, I may be mistaken, but that is my recollection today.

Q. Now, did you do any work in the Mid Continent case?
. No, sir.

Q. And what was the status of this case when you first
arned of it? A. That it was settled.

Q. Settled? A. The first knowledge I had of it is when
udge Haight told me that they had settled the case for a
illion dollars, which depended upon—which was depend-
g upon the Root case.

Q. And you have no way of placing that date when you
st learned of the settlement in the Mid Continent case any
etter than two months prior to the time—— A. I couldn't
ll you the date. I can tell you the date when I was at
alle's office, because I got a check shortly after I was
ere.

Q. Well, now, Mr. Halle's diary shows an entry which
ads as follows: July 22nd, phoned Morgan Kaufman.

Would you associate that telephone call with that five thousand dollars? A. Well, the chances are that I either called here or phoned, and he wasn't in, and he called me back, and then I went over there to see him. I didn't know that date until you just told me. It must have been in response to that check of five thousand dollars. I know he was feeling pretty good that day. He always feels good, I guess.

Q. Now, I would like to call your attention to Amici Exhibit 22, a letter addressed to you by the comptroller of the Universal Oil Products Company. Did you receive that letter? 2612

(The witness examined Amici Exhibit 22.)

A. I did.

By Mr. Thiess:

Q. And this letter does not refer in any way to the Mid Continent case, does it? A. It does not, no.

Q. It merely refers to legal services? A. Legal services.

Q. Can you account for the fact that nothing was said in this letter, that the five thousand dollar check was for the Mid Continent settlement? A. I can't account for what they wrote, all I was interested, in getting the check, and I think I acknowledged it. I don't know whether I—— 2613

Q. Your acknowledgment, I will call your attention—— A. I was in Philadelphia, I think, I am not sure, but I see it is on paper——

Q. I call your attention to Amici Exhibit 23.

(The witness examined Amici Exhibit 23.)

The Witness: Yes, I remember writing that letter here in Philadelphia. He called me in Philadelphia, I think, and told me that check was on, or something, I forget.

2614 *Morgan S. Kaufman—For Amici Curiae—Direct*

By Mr. Thiess:

Q. That does not refer to the Mid Continent case, either? A. No, to be applied on legal services, that is right. There is no question I got it, and no question that they paid it.

The Master: I understood the witness to say that it was further payment for the Root case, not on account of the Mid Continent, for which he did nothing.

The Witness: No, no, that is the—well, I got the ten—I got the five thousand dollars, they can apply it for whatever they want to. I applied it upon my regular retainer. It wasn't really, I agree with you, it wasn't a Mid Continent fee, it was a fee that they gave me because they had settled that Mid Continent case, I assume.

2615

By Mr. Harris:

Q. But it was some more of the Root fee—— A. Right.
Q. —that you figured you should have? A. Right.

The Master: That is what I understood.

The Witness: Right.

2616

The Master: A part of the amount which he said had been deducted from his first charge——

The Witness: That is right.

The Master: —in the Root case.

By Mr. Thiess:

Q. Now, I wish to call your attention to Amici Exhibit 28, which is a check in the amount of ten thousand dollars, under date of December 2, 1936, to you, from Universal Oil Products Company.

(The witness examined Amici Exhibit 28.)

A. December 2nd, 1936, yes, sir.

By Mr. Thiess:

Q. Did you receive that check about that time? A. I did.

Q. Did you contact Mr. Halle or any attorney of Universal Oil Products Company to arrange for the payment of this check? A. I did.

Q. Will you please tell us when, where, and the substance of the conversation which resulted in the payment of that ten thousand dollar check? A. Well, in 1936, in December, I was beginning to figure up my income tax, and then I was beginning to figure up what moneys I was going to receive in 1937, and I figured that if I could get the Universal check and put it in my income tax for 1936 it would help me very materially with my 1937 income tax. I hadn't sold much stock that year, and together with my stock transactions I thought I expected to make a lot of money, because I think stocks were beginning to go up in '37, but ultimately went all the way down, the latter part of 1937; and so I asked Mr. Halle whether it would not be agreeable to the company to give me a retainer for '37 in the year '36, whether it made any difference to them, and he said, "Why, I don't see why you can't have it, and," he says, "I will see that you get it", and that was all there was to it. He sent me the check in December, 1936, for my 1937 retainer. 2618 2619

Q. And do you remember whether there was a remittance slip with that check? A. I don't know anything about remittance slips. They may have sent it. I don't think they ever sent a remittance slip, to my knowledge, but I do know that there may have been a letter of some kind sent along.

Q. And this ten thousand dollar retainer was for services to be rendered by you in 19—— A. To be rendered.

Q. In 1937? A. In 1937.

Q. Now, is it a fact that this check, this December check, 1936, was handed to you personally by Mr. Halle? Do you remember that? A. I don't recall. If there is no letter,—there must have been some letter—it must have been that he did, but I doubt it. I think it was sent to me.

Q. There is a letter here, December 2nd.

(Amici Exhibit 29 was shown to the witness.)

A. We enclose herewith our check for ten thousand in full payment for services rendered during the year '36 and for retainer for 1937—that is correct, that is a letter that I received. I remember that very distinctly.

2621

Q. Do you remember whether you received that through the mail or whether that letter and check was handed to you personally? A. I am quite sure it came through the mail.

Q. The reason I ask you, Mr. Halle's diary shows December 3rd that Judge Haight and you were at the offices before —Universal's offices—before Mr. Halle's arrival. A. Yes.

Q. Do you remember the occasion for going to the Universal's office on December 3rd?

Mr. Harris: Have you got that universal calendar there?

Mr. Thiess: Yes. Want to see it?

2622

Mr. Harris: Yes.

A. No, I am sure that this check was mailed to me. Well, now, this is not my letter to them—oh, pardon me, this is the letter, "We enclose herewith our check in full payment for services"—I am quite sure this letter was sent to me by mail.

By Mr. Thiess:

Q. Do you remember what the occasion was for going to see Mr. Halle with Judge Haight on December 3, 1936? A. That I went there to see——

Q. The entry is, December 3rd, Judge Haight and Mr. Kaufman at office before my arrival. A. Oh.

Q. Do you know why you were there? A. That may have been some matter that I had with the Judge at that time, we—unless there was a proceeding in this what-do-you-call it case, Crew Levick case. Was there any? Have you got the record there to show whether there was any proceeding on December 3rd? Then it must have been some matter that I had with—just a coincidence, that I must have had some matter with Judge Haight, either coming up, or to discuss the matter, and that was about the time——

2624

(The docket entries were shown to the witness.)

A. (Continued) I had a number of matters with Judge Haight. There is nothing in '36—no, there is nothing there. I had a number of matters there. I haven't related one-half of the things that I have had with Judge Haight on these—on all the cases that we were—I know we were discussing a very important case at one time, of a decedent of New Jersey, a case involving many millions of dollars.

By Mr. Thiess:

2625

Q. Well,——

Mr. Harris: Let him finish.

A. (Continued) I am just trying to think, about that time, whether it was that matter or some matter connected with one of the cases, or the Kelly Springfield case—I can't recall. I had a number of very important matters with Judge Haight that involved many, many millions of dollars, discussed with him on matters of that kind, and that pertained to New Jersey, particularly. Now, why I was there on that day with him, I can't give it to you, because I have no record, but I

must have been there for a purpose, but I don't think it was in connection with this matter. It might have been, but I am sure—I am quite sure it wasn't, because this came to me through the mail.

By Mr. Thiess:

Q. The only reason I asked you, the testimony shows that the check was drawn in the Universal office in Chicago on December 2nd, and it was then transmitted to the New York office together with this letter,—— A. I see, I see.

2627 Q. —this is the letter of transmittal,—— A. I didn't know it, but——

Q. —and I was wondering whether you remember that the letter and the check——

Mr. Harris: Now, also, tell him what Exhibit 31 shows. That is what New York did with it. New York writes Chicago that they received the check and mailed it to Mr. Kaufman.

Mr. Thiess: That is right.

Mr. Neuman: We want to ask our question.

The Witness: I was quite sure I received the check by mail, I was quite sure about that, I was quite sure about that.

2628

By Mr. Thiess:

Q. Now, referring to this, Mr. Halle's entry in the diary as of December 3, 1936, do you remember talking to Mr. Halle at that time? A. I don't.

Q. You have no recollection of that? A. I have no recollection. It may be, it may be so that I did, but I can't recall. I can't even recall what discussion I had with Judge Haight on that day.

Q. Now, at the time that you arranged for the payment of this second ten thousand dollar check what, if any, dis-

cussion did you have with Mr. Halle respecting your payments, further payments? A. I don't recall of any discussions that I had with Mr. Halle at that time at all. I may have discussed something, but I can't recall it. As I said to you a minute ago, that date seems to be absolutely blank so far as being over there with Halle. I know I have been over with Judge Haight there many times, because I have had a number of matters to discuss with him, but——

Q. Well, isn't it—go ahead. A. I am through.

Q. Isn't it a fact, Mr. Kaufman, that at the time that Mr. Halle gave you this last ten thousand dollar check, or 2630
arranged to give it to you, he advised you that you were to receive no further payments from Universal Oil Products Company except for services actually rendered? Do you remember that? A. No. Judge Haight told me that he had a conversation with Halle about that, but I don't remember of Halle ever saying that to me.

Q. Well, did Judge Haight tell you that? A. But he didn't tell me that until—until I discussed with him 1938. He said to me, "You know, I had a discussion with Halle about it, and he wants to—he just wants you to hold up all your bills until this matter is disposed of, hold this thing in abeyance, because we are not going to continue, proceed with this case, until—we have a very similar case in Illinois and 2631
we would like to finish the case in Illinois before we start with this case," and I didn't so understand it, he told me that, but he—that is, Halle—but Judge Haight told me that he had a discussion with Halle, and that Halle told him that, that I recall very distinctly, but I don't recall, that discussion took place in '38, because I know I started in to ask him about a retainer and that is how he happened to talk to me about it.

Mr. Thiess: Have you got the original of the letter of March 25th,——

Mr. Harris: 1938? No. We have a copy.

Mr. Thiess: I have a copy.

Mr. Harris: But we will concede that is a copy.

By Mr. Thiess:

Q. I wish to show you a letter, Mr. Kaufman, under date of March 25, 1938, from you to Judge Haight. Do you remember sending that letter?

(The witness examined the letter.)

2633 A. Yes, I remember that. I remember that letter very well. He started to laugh when I—he saw me afterwards. "Why," he said, "you got paid in '37."

I says, "No, I didn't, I didn't get no pay in '37."

Let me see that letter again. I remember that letter very well.

And I said, "What I meant, what I meant to say, Judge, was that I received no retainer in '38, and that is the thing I know", and then when I came back, I said, "Yes, I received the '37 retainer in '36 for '37, but didn't receive a retainer in '38, and that is what I want to discuss with you about."

By Mr. Thiess:

2634 Q. And it was at that time that you had the discussion that you have mentioned with Judge Haight respecting your 1938 retainer? A. In 1938. As I said to you before, that is the time the discussion took place about 1938. I had forgotten all about this incident here, because they had sent me a check in '36 for the year '37, and in '37 my books didn't show it—of course, I don't take in so much that I shouldn't remember a ten thousand dollar retainer, I took in seventy-five or eighty thousand, whatever my income tax shows that year, in fees, but whatever it was, I didn't look upon that, and I couldn't find it in '37, and for that reason I wrote that check—or,

wrote this letter, and when Haight saw me he laughed and says, "Why, you got that check in '36."

I says, "Yes, I got it in '36."

"Yes," he says, "you got a '36 check for '37."

So I called back my secretary, and she says, "That is correct, you did get that for '37", so I says, "Well, what about '38?" and then he started to tell me about the discussion that he had with Mr. Halle—but Halle, I don't recall of ever having a discussion with me about the '38.

By Mr. Thiess: 2636

Q. You have no recollection of that? A. I don't have any recollection. I know he talked to Judge Haight, but he didn't talk to me that I can recall.

Mr. Thiess: I would like to offer in evidence this letter, from Morgan Kaufman to Judge Haight, under date of March 25, 1938, as Amici Exhibit——

The Witness: Let me see that again, please.

Mr. Thiess: —79.

The Witness: That is right.

(Copy of letter dated March 25, 1938, from Morgan S. Kaufman to Hon. Thomas G. Haight was marked Amici Exhibit 79.) 2637

By Mr. Thiess:

Q. Well, now, when you discussed this matter with Judge Haight, and Judge Haight told you that there were no further payments to be made, what was said? Will you give us the substance of the conversation?

Mr. Harris: Well, do you want him to give it over again?

The Witness: I gave it to you.

Mr. Harris: He has given it once.

The Witness: But I would be glad to give it ove to you again. When I asked for the '38 retainer, I said, "Judge," I said, "I haven't been paid for it."

Well, now, he refreshed my recollection abou this, and we had some talk about it, and I telephoned to my office, and the girl said, "Yes, that check was fo '37 but was sent to you in '36."

"Well," I says, "I made an error. How about th '38, then, Judge?"

2639 He said, "Well, now," he said, "I am going to b very frank with you, Mr. Halle suggested that w sort of keep—hold this in abeyance until we do som more work on this case, because the case in Illinois which is of similar nature, they want that tried first and then we will try this later", and that was substantially all that was said.

By Mr. Thiess:

Q. Well, what was your reply? What did you say as to cutting off the retainer? A. I don't think I made much of a reply, I don't think I said anything, and I left things in abeyance, up in the air. That is why I said to you this

2640 morning I don't know whether I am in or out.

Q. Well, isn't it a fact that according to your testimony you were still counsel for the Universal for Pennsylvania or whatever you may want to call it at that time? A. I thought so.

Q. And weren't you still in the position that you could not take retainers from any other oil company? A. I thought so, I thought so.

Q. And under those circumstances wasn't your position then just the same as it was before, and weren't you entitled to the retainer then just the same as you were for the prior years? A. That was my understanding, but what their understanding is may be another thing.

Q. And you didn't raise that point at all with them at that time? A. I didn't raise it, naturally. Why should I start raising it? After all, it was in March, they had paid me for years up until '37; there was no reason for me to raise a hullabaloo in '38, when it was in March. I thought perhaps in '39 or '40 they would come around and send me a check.

Q. Well,—— A. But when my troubles began I didn't feel that I ought to get any retainer at that time,

Q. No. A. And I didn't want to take any law business, or anything else. 2642

Q. But did you continue to represent Universal in the Crew Levick case in 1941? A. There was nothing to do.

Q. Well, there was, the case had to be reinstated after it had been dismissed. Did you do any work on that? A. I did not.

Q. Did no work whatsoever? A. I didn't do any work, of any law business. I haven't practiced law now since my troubles began. I wouldn't take a case for any amount, just now. I want to clear my name, that is all I want to do, if I can ever do it.

Q. And you didn't receive, you haven't received any fees from Universal—— A. I have not. 2643

Q. —since 1937? A. I have not.

By Mr. Harris:

Q. '36? A. For the year 1937.

Mr. Thiess: For the year 1937.

By Mr. Harris:

Q. Since December, 1936? A. That is correct.

Mr. Thiess: For the year 1937.

By Mr. Thiess:

Q. Now, I think you have already stated that you knew Judge Davis intimately for some time? A. I didn't use the word "intimately". I knew him very well.

Q. All right very well, then. A. As well as I know all the other judges, you know, I think perhaps——

Q. For how long have you known him? A. Well, I have known Judge Davis for about twenty years or more.

Q. What was the character of the social contact, if any, that you had with Judge Davis during that period? A.
2645 Well, I first knew him when he came up there to preside specially while Judge Witmer was away, and while he was there, at times they needed assistants, and at that time I was connected with the courts, I was the United States Referee in Bankruptcy, and Judge Witmer and he would come down, they lived at the same hotel, at the Hotel Casey, where I lived, and we dined together once in a while and we would take walks together, and as he came down every time our friendship—our acquaintance ripened into friendship, I got to know him quite well. He came up to visit me at times. He, at one time, he came up with two—twice he came up with his two little boys, and they went fishing.

Q. Where was this, at Towanda? A. At Towanda, Penn-
2646 sylvania, he was there for a day or two. His little daughter came up there, who is now Mrs. Firestone, and I think on one or two occasions his wife came along, and they were on their way to somewheres up in Ohio, or somewhere, I forget where.

Q. At this home in Towanda,—is that the way you pronounce it? A. Yes.

Q. —did you give an annual party for the judges? A. Well, I think it was annual, I might have skipped a year or two—not for the judges, for the members of the Bradford County bar, to meet all these judges as they came up. That

is, we had a nice, small bar up at Bradford County—I am speaking of a legal bar, now.

Mr. Harris: It wasn't exclusive of anything else?

A. (Continued) So I would have all these judges come up and meet these lawyers, and it was a great treat to the lawyers in that section to meet all these Supreme Court judges or District judges, Federal District judges, and judges of the Circuit Court of Appeals. I did that for years.

By Mr. Thiess: 2648

Q. How many years was that, do you remember? A. Well, I couldn't tell you how many years, but I did it for, oh, eight, ten years, something like that, might have been less or more, never paid any attention to it.

Q. Well, now, your brother David maintained an apartment at the Bellevue-Stratford, did he not? A. Yes.

Q. Here in Philadelphia? A. Yes.

Q. Do you remember over what period he did that? A. Well, he came down here, I think, in 1926 or '7, and then he was appointed United States Minister to one of the countries in South America, in 1928, and he left in 1928 and came back in 1929, and he was appointed then by, I 2649
think, either Hoover or—yes, he was appointed by Hoover to go to Siam as a Minister, and he was United States Minister there for—until 1933. I think he came back in 1933. After that he opened an office here in Philadelphia, in 1935.

Q. Did you have the use of that apartment——. A. Whenever——

Q. —when you were in Philadelphia? A. Not while he was gone to Europe, he had no apartment.

Q. No, I mean when he had the apartment. A. When he had the apartment I would come up there and bunk with him, yes, to save expenses, going up there.

Q. Did Judge Davis—— A. He was a bachelor, by the way, the same as I am.

Q. Did Judge Davis and Judge Buffington frequently visit this apartment when you were there? A. Why, yes, that has sort of been a rendezvous of the judges of the Supreme Court and the Circuit Court and the District Court, or anybody, I find people there all the time. I didn't pay any attention who was there and who wasn't there.

Q. And you took your vacations, winter vacations, in Florida, did you not? A. Most of the time.

Q. When did you begin doing that? A. Oh, I have been doing that for a good many years, way back to '22 or '3, about twenty years or more.

Q. When was the first time you spent your vacation at the Miami-Battle Creek Sanitorium at Miami Springs, Florida? A. I couldn't give you the date. It was—if you have got it there I will assume you have it correct. I don't recall the dates.

Q. To refresh your recollection, was it in February, 1934? A. I wouldn't be a bit surprised. That may be right.

Q. And then—— A. I was there for three or four years.

Q. And then in February—— A. I discovered that by going to Battle Creek, instead of going right into the heart of Miami, I would get much more rest, and it is a health resort, and you can only go to the races in the afternoon, and no chance to go into any of these gambling houses at night, which I tried to avoid, and for that reason, they always had entertainments of all sorts, the old man, I think he was close to ninety at that time, old Doctor—what is that doctor's name?

The Master: Kellogg?

A. (Continued) Kellogg, he would give speeches on not smoking and not drinking, and all that sort of thing. We couldn't drink or smoke while we were there.

Mr. Harris: Not on the premises.

The Witness: Not on the premises, that is right, but we got off of the premises to do these things.

Mr. Harris: So we heard.

By Mr. Thiess:

Q. Was it at the suggestion of Judge Buffington that you went to the Miami-Battle Creek? A. No, I think my brother suggested it, he was there alone one year, and he thought it was a marvelous place, and when I got there and realized what they were doing there I thought it was a 2654
fine thing, and I went down there and stayed there for three or four years.

Q. During the years 1934, 1935, 1936 and 1937? A. I may have. I don't recall the dates.

Q. Now, during a portion of each of these stays that you were there, your brother, David Kaufman, was also there, was he not? A. I think so, most of the time, at least.

Q. And during a portion of each of these stays Judge Buffington was present, was he not? A. Yes.

Q. And —— A. Judge Buffington and the old man, Kellogg, was great friends there. He would introduce him 2655
as also a man who hadn't used tobacco, and all that, and look at him, at eighty, so and so, as Exhibit 1, he would show him off, you know, to the crowd.

Q. During those years did Judge Davis also stay at the Battle Creek Sanitorium while you were there? A. Well, now, Judge Davis wasn't there but maybe one or two years, and he was only there a few days at a time, he and Mrs.—I remember he and Mrs. Davis came there, but I think she was very sick, when she came there, and at one time he was very sick, and they were there one or two years, I don't remember which year.

Q. And you say they were there only a short time? A. They were only there a short time, maybe within a week; I don't think any of them were there longer than a week.

Q. Never stayed longer than a week? A. I wouldn't say never. My recollection is they were only there a short time. They wouldn't stay there three or four weeks, like I would, or the other people would. They were all there together. Mr. Morganthau was there, the father of the Secretary of the Treasury, and these judges were there, and I forget—there was a Cabinet member there, and it was quite a well-known resort there.

2657 Q. Well, during your vacations in Florida at the Battle Creek Sanitorium when Judge Davis and Judge Buffington and your brother David were there, were you closely associated in your contacts? Did you eat your meals together and have your diversions and amusements together? A. No.

Q. You didn't? A. I don't think so. I would see him when we were outside, getting a rub, he might have his bunk next to mine, and he would be waiting for the rubber, when he got through with me, why, he would be next. Or over on the other side was Mr. Morganthau, or someone else. I can't recall that.

Q. You didn't arrange to take your baths together and
2658 meals together, and things of that kind? A. You can't arrange those things. You come and go. His mode of life and mine were as different as day and night. I was at the races every afternoon. I don't know where he was. You get through in the morning and get your baths and your irrigation and you would go out somewhere. Sometimes I would have my lunch up at the race track, most of the time, in fact, because I didn't care for the meals that they were serving, nothing but vegetables and the——

Q. Did you go out regularly with Judge Buffington and Judge Davis and your brother, David, at night? A. No, very seldom.

Q. Very seldom? A. Might have gone up to the corner drugstore, or something like that, and got a cigar, or smoked a cigar.

Q. But not for amusements? A. I don't think so.

Q. Now, the meeting of Judge Davis and Judge Buffington and your brother, David, and yourself at the Battle Creek Sanitorium in Florida, wasn't that by prior arrangement,—— A. I never——

Q. —that you all meet there? A. I never asked any of them to go there, I just went in there and telegraphed for a room and I got it. Many times I would go down myself. I 2660
never—I think Davis, Judge Davis, if I remember correctly, motored most of the time down there, he motored all the way to Florida—I never motored in my life down there. I never arranged anything for Judge Davis, or any other judge down there.

Q. Do you know that your brother—do you know whether or not your brother, David, made arrangements for all of you to go down on these various years? A. I couldn't tell you what my brother did. You know, no man is his brother's keeper. I am not accountable for what my brother does, any more than——

Mr. Harris. May we adjourn shortly, Mr. Master? 2661
I would like to catch the five o'clock train.

(Discussion off the record.)

The Master: Have you come to a good place to stop?

Mr. Thiess: I guess we can stop here.

The Master: Well, then, we will adjourn until tomorrow morning at 10:15. Very good.

(Adjourned until Wednesday, October 28, 1942, at 10:15 o'clock A. M., Eastern War Time.)

2662

Transcript of Hearing, October 28, 1942

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Wednesday, October 28, 1942, at 10:15 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., Master.

2663

J. BERNHARD THIESS, Esq. (77 West Washington Street, Chicago, Illinois).

THORLEY VON HOLST, Esq. (77 West Washington Street, Chicago, Illinois).

Amici Curiae.

ROBERT W. POORE, Esq. (77 West Washington Street, Chicago, Illinois).

SIDNEY NEUMAN, Esq. (77 West Washington Street, Chicago, Illinois).

Counsel accompanying *Amici Curiae.*

2664

W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq. (100 Broadway, New York, N. Y.).

EDWARD J. O'MARA, Esq. (15 Exchange Place, Jersey City, New Jersey).

JOHN R. MCCULLOUGH, Esq. (100 Broadway, New York, N. Y.).

Representing Universal Oil Products Company.

Evidence on Behalf of Amici Curiae (Continued).

MORGAN S. KAUFMAN, recalled.

Direct Examination (Continued):

Mr. Thiess: All right to proceed?

The Master: You may proceed, Mr. Thiess, yes.

2666

By Mr. Thiess:

Q. When we adjourned last night, Mr. Kaufman, we were talking about your vacations in Miami at the Battle Creek Sanitorium. Now, your meeting with your brother David and Judge Buffington and Judge Davis on these occasions was by prearrangement, was it not? A. Not so far as I was concerned.

Q. I wish to call your attention to a photostatic copy of a telegram from David E. Kaufman to Morgan S. Kaufman under date of February 7th, 1935, and ask you whether you remember sending that telegram.

2667

Mr. Harris: Has that been marked in evidence?

Mr. Thiess: Not yet, no.

Mr. Harris: Would you mind letting us see it?

Mr. von Holst: It has been marked for identification.

Mr. Harris: Do we have a copy?

Mr. Thiess: It has been marked for identification, has it?

Mr. von Holst: Yes, it is one of a group, it is 57 for identification.

2668 *Morgan S. Kaufman—For Amici Curiae—Direct*

Mr. Harris: It would simplify these things if we had copies at the time to pass around.

(The telegram was shown to the witness.)

The Witness: What is the question?

By Mr. Thiess:

Q. Do you remember sending that telegram? A. I didn't send that telegram.

2669 Q. I mean, receiving the telegram. A. I don't remember receiving it. I assume it was received and I got it, but I don't recall it until you just brought it to my attention. I assume that I received it.

The Master: That wasn't one we had.

The Witness: Mr. Atterbury referred to there is the President of the Pennsylvania Railroad, gentlemen, if you don't know who he is.

Mr. Thiess: I wish to offer this telegram in evidence as Amici Exhibit 80.

Mr. Harris: Well, of course, it has not been properly proved, Your Honor. I don't make any point of
2670 that because Mr. Kaufman says he thinks he probably received it, but I certainly don't see why the record should be encumbered with this. We could understand what——

The Master: Well, I don't see that it has any relevancy at the present moment, but it might fit in with something else, I suppose. Perhaps the quickest way to dispose of it would be to receive it.

Mr. Harris: Well, Your Honor, in respect to that, we have gone along on that theory with respect to a great deal of evidence here. It seems to me sooner or later the time comes when Your Honor ought to

take a position with reference to connecting. There is a vast amount of testimony that Your Honor has taken subject to later testimony showing it could be connected. Nothing has been shown yet to connect this.

Now, we just get a vast amount of stuff that the parties on the other side will base arguments on that really has no business in the record. It would seem to be logical, if the so-called Amici have any testimony by which, from which they might argue that our client is in any wise involved, in anything 2672
charged here, they ought to put it in. That would seem to be logical. I have not been at all obstructive in the matter, don't you know, of allowing, or not objecting to things going in on the theory that they were going to be connected, but I have come to the conclusion that they haven't anything which will connect this, and that we are just using your time and using our client's time and their own client's time to no avail.

Now, of course, I know that they are not going to show anything to connect our clients with any wrongdoing on the part of Mr. Kaufman or Judge Davis, if there was any, but at least, whatever they 2673
are going to use to argue from that there was some connection, it seems to me sooner or later ought to be disclosed, and not go about putting in things that haven't any more to do with this case, so far as the record now goes, than the weather report for yesterday, and I simply wish to state at this time on the record that it does not quite seem fair to the Circuit Court of Appeals or to Your Honor as the Referee, or to us, who are here at our client's expense day after day, not to at least offer what they think they can

2674 *Morgan S. Kaufman—For Amici Curiae—Direct*

argue from which would raise some connection between our client and Judge Davis and Mr. Kaufman.

Now, this telegram in and of itself, and so far as anything in the record up to date is concerned, is as innocuous, as I said, as yesterday's weather report, in today's newspaper.

The Master: Well, as I have said, this telegram of itself obviously is not connected with anything else, but the general question I was directed to investigate, and which the amici are endeavoring to investigate in this proceeding, is a very wide charge
2675 of fraud or possible fraud, which must be proven, if at all, I suppose, by circumstantial evidence, and I should be inclined to admit evidence which counsel think they can connect or link up in some way with such a charge, and if it does not link up I think I can disassociate my mind from it when it comes to making a finding.

Mr. Harris: All right, sir, I just felt that from time to time I should register slight protest on the present state of the record.

(Photostatic copy of telegram dated February 7, 1935, from David E. Kaufman to Morgan S.
2676 Kaufman, was marked Amici Exhibit 80.)

By Mr. Thiess:

Q. I now show you a longhand memo on Western Union stationery, telegram, Morgan to Edwin L. Weisl, under date of September 27, 1935.

Mr. Neuman: That is February.

Mr. Harris: May I see a copy of it?

Mr. Thiess: February 27, 1935.

Mr. Harris: It will just speed it up a little if you pass them along.

By Mr. Thiess:

Q. Do you remember sending that telegram?

(The telegram was shown to the witness.)

Mr. Harris: By the way, is it conceded that Edwin L. Weisl, to whom this is addressed, is the law partner of Judge Thomas D. Thacher, formerly Solicitor General and Judge of the United States District Court?

Mr. Thiess: No, I don't think so.

2678

By Mr. Harris:

Q. Is that the same Mr. Weisl? A. Yes, sir, he is one of the senior members of Simpson Thacher and Bartlett, a very dear friend of mine.

Mr. Harris: I think Edwin L. Weisl is a member of the firm of——

The Witness: He is, no question about it.

Mr. Harris: —Simpson, Thacher and Bartlett, in New York City.

2679

By Mr. Thiess:

Q. He was at one time connected with Mr. Ungerleider in the brokerage business? A. Yes, sir.

By Mr. Harris:

Q. He was also a Chicago lawyer, originally, wasn't he? A. That is right, he was with a large firm.

Q. Mayer, Meyer, Austrian and Platt? A. I can't recall the name, but it was a very large firm.

2680 Mr. Harris: I think it was Mayer, Meyer, Austrian and Platt, but I am not positive of it.

Mr. Neuman: He was assistant District Attorney out there.

Mr. Harris: He was?

The Witness: That is right.

By Mr. Thiess:

Q. Is this your handwriting?

2681 (Mr. Thiess referred to the telegram from Morgan to Weisl, dated February 27, 1935.)

A. Yes, sir.

Mr. Thiess: I wish to offer this telegram in evidence as Amici Exhibit 81.

The Master: It will be received.

(Photostatic copy of telegram dated February 27, 1935, from Morgan to Edwin L. Weisl was marked Amici Exhibit 81.)

2682 *By Mr. Thiess:*

Q. I now show you another document, apparently purporting to be a telegram to Robert Bast, signed Morgan, and ask you whether you remember sending that telegram.

(The witness examined the telegram.)

The Witness: I don't see any date on here.

Mr. Thiess: There is no date on there.

The Witness: Is that a telegram, you say?

Mr. Thiess: So we understand. It came from the records of the hotel.

Mr. Harris: You are not testifying, are you? I mean, the witness——

The Master: The witness asked him——

Mr. Thiess: The witness asked——

The Witness: I asked him whether there was a date on here. This is my handwriting, yes.

Mr. Poore: The record should show that this is one that was produced by Mr. Herrell as a copy, or, rather, the original of the telegrams sent at the Miami-Battle Creek Sanitorium.

Mr. Harris: Did he identify the date? 2684

Mr. Poore: Mr. Herrell did not.

The Master: Didn't mention any date?

Mr. von Holst: There is a date that can be established by the charge on that telegram and the charge on the corresponding ledger sheet.

Mr. Harris: If you will give it to us we will take it subject to correction.

Mr. Neuman: We understand it is February 14, 1936.

Mr. Harris: That date at the bottom, then, was probably written in by you?

Mr. von Holst: Yes.

Mr. Harris: And that you got from the—— 2685

Mr. Thiess: Charge slip.

Mr. Harris: —charge slip. Well, how could you identify this particular telegram, because it was the only one to Robert Bast?

Mr. Neuman: No, it is the only one appearing on Mr. Kaufman's bill in the amount of $1.08 plus tax.

Mr. Harris: $1.08 plus tax, I see, all right. Well, you mean that is the only one he found, the only——

Mr. von Holst: It is the only one produced——

Mr. Harris: Only one produced.

Mr. von Holst: —by Mr. Herrell in that amount.

Mr. Harris: I see.

Mr. Thiess: I wish to offer that telegram in evidence as Amici Exhibit 82.

(Photostatic copy of telegram from Morgan to Robert Bast, purportly dated 2-14-36, was marked Amici Exhibit 82.)

Mr. Harris: Mr. Thiess, may I interrupt just a moment? I am sure you want to know who the Judge was he referred to.

2687 *By Mr. Harris:*

Q. Was it Judge Buffington or Judge Davis? A. It wasn't Judge Davis. It was speaking of Spahr—it is this firm of Spahr,—I think it is the firm of Spahr, Ingersoll—or, Mr. Master, do you know the name? What is the name of that firm here in town?

By the Master:

Q. Ballard, Spahr, Andrews and Ingersoll? A. Yes, that is the name of the firm, speaking of Spahr. The judge is not Judge Davis referred to here.

2688 *By Mr. Thiess:*

Q. Is it Judge Buffington? A. That is the only man—I think the Judge took the boat.

By Mr. Harris:

Q. Which judge? A. Judge Buffington took the boat. By the way, I might state there that Mr. Bast represents Judge Buffington in all—is a very close personal friend of Judge Buffington. Mr. Bast is one of the—I think he is a trust officer downstairs.

The Master: He is vice-president——

The Witness: Vice-president of the Land Title Bank, yes.

The Master: That is right.

By Mr. Thiess:

Q. Is it a fact, Mr. Kaufman, that Judge Buffington obtained discounts from the hotel for you and your brother David? A. Did he obtain discounts——

Q. Yes. A. —for us?

Q. For you. A. I don't know, I paid the bill, whatever 2690
it was. I don't recall of any discounts.

Q. You don't know that you got any discounts? A. I didn't say—I may have gotten discounts, they all get discounts in hotels, they give it to you in one form or other. I get discounts wherever I go, that is, at some places.

The Master: I am glad to know it. I never heard of it before.

The Witness: Oh, yes, my brother always got a twenty-five per cent discount where ever he went, on account of being a former Minister, and, of course, I just slipped in, if he would get two rooms, why, he would naturally pay it, or I would pay it and get the 2691
twenty-five per cent off. There is something about a hotel that we all like to get discounts; why it is, I don't know.

By Mr. Thiess:

Q. You have no recollection that Judge Buffington was responsible for those discounts? A. I have no recollection of it, no.

Q. Do you know why you did not return to the Battle Creek Sanitorium in 1937?

Mr. Harris: If he did not.

Mr. Thiess: If you did——

A. I have no recollection at this time. I suppose I got fed up on it, that is the answer to it.

By Mr. Thiess:

Q. Did you spend your vacations with Judges Davis and Buffington, or either of them, in Florida in 1938? A. I don't recall who they were, I used to meet all the judges there at different times.

Q. Did you go to Florida in 1938 for a winter vacation? A. I think I went to Florida every year.

Q. And do you remember whether you were there with your brother David—— A. I couldn't——

Q. —and Judges Davis and Buffington? A. I think he was there most of the years I was there. He may not have been some of the years. I paid no attention to it.

Q. How about Judges Buffington and Davis? A. I don't know. I am not their keeper, if they were.

Q. You have no recollection of their being there? A. I think they were there, Judge Buffington was there, Judge Davis might have been there, and fourteen hundred other judges, so I have no recollection that they were there, or that they weren't there.

Q. You don't remember meeting them in 1938? A. I don't remember. I won't say, I may have met them. If they were there I certainly would have met them. I met these people in Miami.

Q. Did you know in February of 1935, when you were with Judges Davis and Buffington at the Miami-Battle Creek Sanitorium, that the case of Universal Oil Products Company versus Root Refining Company was then under advisement by the Court and that Judges Buffington and Davis were members of the court considering the case? A. I may have

known it at that time. I have no recollection at this time that I may have known it. Naturally, I knew that they were members of the Circuit Court of Appeals.

Q. And did you know at that time that they had this Universal Oil Products Company case under adviseinent? A. If they sat in the case they must have had it under advisement.

Q. You knew about it then, did you? A. I must have known about it at the time. There were only three judges that were active at the time. I think there was a fourth Judge, but he was sick most of the time, a Judge from Wil- 2696
mington, I can't think of his name.

Q. Woolley? A. Woolley.

Q. Did you at that time tell either Judge Davis or Judge Buffington that you had been retained by Universal Oil Products Company in this Root litigation? A. I did not. I never discussed that case before any Judge, or any case that has ever been pending before them, even if I were . tually in the case, or argued the case, or did not argue the case, I never discussed the case, and if you knew Judge Buffington, and you ever tried to discuss a case that he had before him, he would be your enemy for life, he would just walk away from you, he is through, that was all.

2697

Q. Did you make any inquiry whether Judge Davis or Judge Buffington were sitting, sat on this Root case? A. I did not—from them?

Q. From them. A. No, sir.

Q. Well, under those circumstances weren't you violating the idea that was suggested by Judge Haight, when it was stated that your name was not to go on the brief, by spending time with Judge Davis and Judge Buffington in Florida? A. I don't——

Mr. Harris: Well, I think that——

2698 A. (Continued) I don't see where you get that sort of an inference——

Mr. Harris: —is objectionable.

A. —or statement.

Mr. Harris: Just a minute. I think that is objectionable.

The Master: Well,——

Mr. Harris: What he thinks Judge Haight would have thought.

2699 The Master: I will sustain the objection to that.

Mr. Thiess: All right.

By Mr. Thiess:

Q. Did you know in 1935 that Judge Davis wrote the opinion in the Root case? A. I remember at that time I read about it, read the opinion, and when they asked me the question, if I recall correctly, before the Grand Jury, I told them that I didn't think Judge Davis had written the opinion, I thought that Buffington had written it, but upon a reflection of it now, I think that Davis did write the opinion and Buffington concurred in it.

2700 Q. Well, before the Grand Jury you stated you were quite sure, if I remember, that Judge Davis did not write the opinion. A. That is correct. I was mistaken.

Q. That was in 1940? A. That is correct, I was mistaken.

Q. What made you so sure at that time that Davis did not write the opinion? A. Well, we had the copies of the different opinions up in the first and second trial, or the record of all the cases that I ever had from 1910, thirty years ago, every case that I ever had in the Circuit Court of Appeals, and amongst the list was the Universal Oil Company case, and Davis—Davis wrote the opinion in that case, so the record disclosed. That is how I knew I was mistaken.

Q. Well, you misconstrued my question, Mr. Kaufman. My question was, why were you so sure at the time that you testified before the Grand Jury that Judge Davis did not write the opinion? A. That was my impression, the impression that I got, I thought it was Buffington that wrote the opinion, because I knew that Buffington wrote most of the opinions in patent cases. I think he is known as a patent judge, if I am not mistaken.

Q. You had read this opinion before that time, had you not? A. Before 1935?

Q. Before 1940, when you testified— A. Oh, yes. 2702

Q. —before the Grand Jury. A. It just skipped—

Q. Did you know at that time who was the author of the opinion? A. I knew at that time, it just skipped my mind, and when they asked me these questions, mind you, that was the first time I had ever been on the witness stand, before that Grand Jury, I had been examining witnesses but never been on the stand, and I was simply mistaken in who wrote the opinion. I could have sworn then, because I knew that Buffington wrote most of the patent opinions, he was known as a patent judge, all over the country.

Q. Now, when you left the Miami-Battle Creek Sanitorium in 1935 have you any recollection as to where you went from there? Did you come back East, or where did you go after your vacation? 2703

Mr. Harris: Can you refresh his recollection as to when he left?

Mr. Thiess: He left in—

Mr. Neuman: March 6th.

Mr. Thiess: Was it March 6th?

Mr. Harris: Well, about March, early part of March?

Mr. Thiess: It was some time in March.

Mr. Harris: All right.

2704 A. Well, I suppose I came home, I don't know, I may have stopped off. You are asking, now, in 1932?

Mr. Thiess: 1935.

The Witness: March 6th, 1935?

Mr. Thiess: Yes.

By Mr. Thiess:

Q. Did you go to New York, or did you go back to Scranton, or Philadelphia, or where? Do you remember where you went? A. I couldn't tell you where I went to from there.

2705 Q. Well, at that time you were active in the Tri-Ergon case? A. '35?

Q. Yes. A. No, the Tri-Ergon case had already been—no, I came back to Washington, now I recall, I came back to await and hear the decision, I think, in the—in the case of the Tri-Ergon Company. I may be mistaken about the date, but that seems to me—if that is the time I came back, I came to Washington and went to the Supreme Court room and listened to the decision of the—at least, we thought that that case would come down then, in the Tri-Ergon case. I am quite sure that I—that is correct.

2706 Q. At that time you were also busy in the Straus Receivership, were you not? A. Yes.

Q. And in connection with that receivership did you live in New York? A. Well, part of the time. I was between Scranton and New York.

Q. Did you spend most of your time in New York or Scranton? A. I spent a great deal of time in New York.

Q. And where did you live in New York? A. At the Ambassador Hotel.

Q. Now, according to Mr. Halle's diary there is an entry of April 15, 1935, which states that you and Judge Haight called at the offices of the Universal Oil Products Company and saw Mr. Halle on that day. Do you remember that in-

stance? A. I remember the incident that I spoke of yesterday, that the Judge and I—the Judge evidently called me over to the office on some matter, and while we were there Mr. Halle came in and he shook hands with Judge Haight, and Judge Haight turned to him and says, "You remember Mr. Kaufman, on our staff?"

He says, "Oh, yes, yes," and he shook hands, talked a few seconds, or minutes, and he walked out.

Q. Well, that was an earlier meeting, was it not? A. No.

By Mr. Harris:

2708

Q. When was this? A. That was—that was in April, after I had—I had met him the first time for a few moments, he rushed in there while I was there with Judge Haight, in the preparing of the brief.

By Mr. Thiess:

Q. Now, that must have been the meeting, then, that you referred to as May or June, 1935, yesterday? A. No, not the first time. The first time was the preparing of the brief. This case was argued, if I recall correctly,——

Q. Well, that is in 1934. A. That is correct.

Q. Well, I am referring to 193—— A. It may have been November or December of that year.

2709

Q. Now, yesterday you referred to a meeting in 1935, in May or June. Now,—— A. It may have been this meeting, April, May or June, I can't say. If you say April 15th, I assume that is correct.

Q. That is the note from Mr. Halle. A. That may be the meeting, I don't know, that may be the meeting.

Q. Now, did you or Judge Haight arrange for this meeting, do you know? A. I can't recall, I think that either I called Judge Haight up and told him I wanted to see him, he said he would be down at the Universal—he used the Uni-

versal for a sort of a conference place there, not only in Universal matters, but other matters that he had when he came over to New York—I assume that, because he always spoke to me there about matters.

Q. And is it your position that this particular meeting on April 15th, 1935 was not anything arranged in connection with the Universal Products matters, but something, a matter which you had with Judge Haight which did not involve the Root case? A. I can't recall just now, but I remember the meeting of him coming in there and meeting me again, and the thought struck me, he definitely—he didn't recognize
2711 me at the second time, after I had met him, but, of course, I had only met him a few minutes the first time.

Q. Well, don't you have any definite recollection at this time that on this particular date, April 15th, 1935, that you and Judge Haight were there on a Universal matter? A. It may be that we were and it may be that we were not, I can't recall that.

Q. You have no recollection? A. I have no data on which I could refresh my recollection.

Q. But you do remember—— A. If someone says there that it was, why, I have to assume that it was.

Q. Have you any recollection how long you were at the
2712 offices of the Universal at that time, at this particular meeting? A. I don't remember what happened seven years ago. I would be telling something—I can't recall.

Q. And you have no recollection whatsoever of the substance of the conversation between you and Mr. Halle and Judge Haight at that meeting? A. Well, Mr.—I don't think Mr.—if I remember correctly Mr. Halle just came in and he didn't interrupt our meeting. Now, it may be otherwise, but that is my recollection today. My recollection is that Judge Haight and I were discussing this, something, and he came in and shook hands with Judge Haight, and Judge Haight turned to him and he says, "You remember Mr. Kauf-

man of our legal staff", or staff, and he said, "Oh, yes, yes," and he shook hands and talked a few minutes and he walked out.

Now, that is my recollection of it. It may be, if they have made another statement, it may be right, I am not disputing, I simply can't recollect anything otherwise. I do remember what the matter was about, but I do remember meeting Mr. Halle at that particular time. Now, whether it was April, or May, or June, I didn't make a note of it anywheres.

Q. And you have no recollection of discussing the Root case with Mr. Halle and Judge Haight at that time? A. I have no recollection one way or the other, I may have done it and I may not have done it. 2714

Q. Did you at that time tell either Judge Haight or Mr. Halle that you had just spent some weeks in Florida with Judge Davis and Judge Buffington? Do you remember that? A. No.

Q. Now, when you were at the Battle Creek Sanitorium in Miami Springs with Judge Davis, did he mention to you the fact that his cousin Stokley was in financial troubles and would like to make a loan?

Mr. Harris: When?

The Witness: When? 2715

Mr. Harris: When do you say?

Mr. Thiess: In 1935.

Mr. Harris: You mean when he was down in Miami?

Mr. Thiess: Yes, when they were all in Miami.

By Mr. Thiess:

Q. And whether you would be able to make the loan to his cousin Stokley? A. I don't recall of any such conversation.

Q. You don't remember discussing that at all with Judge Davis? A. No.

By the Master:

Q. Did you mean, Mr. Kaufman, that you did not discuss it, or that you do not remember? A. I did not discuss it with him at that time.

By Mr. Thiess:

Q. Did Judge Davis discuss with you at all the possibility
2717 of you making an investment in Florida land at that time, that you remember? A. No, sir, not that I can remember.

Q. Now, isn't it a fact, Mr. Kaufman, that Judge Davis asked you respecting this loan on the Florida property in the spring of 1935? A. Well, the first time he asked me about it was about two months before he—I met Mr. Stokley, I would say two or three months, it would be between two and three months.

Q. And that would put that date when? A. Well, it would put it somewhere in August, I guess. That is my best recollection.

Q. Now, Mr. Kaufman, I would like to call your attention to the testimony in the first criminal trial, which reads
2718 as follows:

"Q. And when did you——

Mr. Harris: What page is that?

Mr. Thiess: Page 1464.

By Mr. Thiess:

Q. "Q. And when did you first tell Judge Davis that you would loan the $10,000 to Stokley?

"A. When did I—repeat that question. When did I first tell him that I would loan it?

"Q. Yes.

"A. Why, I said to him the early part of the year, I would say the early part of the spring or summer, 1935, that I would consider it if the property—if the value was there, I would consider making a loan. That was in 1935, I think, in the spring or summer."

Do you remember so testifying?

Mr. Harris: Well, now he says spring or summer,—

Mr. Thiess: Yes. 2720

Mr. Harris: —at, the end.

A. I testified in the summertime there, also, if you will recall in the late summer—now, whether—I remember testifying to that, and I also remember they started to get me, squeeze me down to what time, and I says, "Yes, I do recall it was in the summertime"—now, whether I said late summer or not, if you—I recall that very distinctly.

By Mr. Thiess:

Q. Now, you say in this testimony the spring or summer. 2721
What was it that caused you to later change your mind and fix it in August?

Mr. Harris: Isn't that summer?

A. The reason I fixed it was that I knew it was two or three months between the time he talked to me and the time that Mr. Stokley came down to discuss the matter with me. First the Judge talked to me, and then Stokley talked to me, and the time was between—I think, or, the time that I gave him

2722 *Morgan S. Kaufman—For Amici Curiae—Direct*

the check was, I think, two or three months, that is how I fix the time, I have no other way of fixing it.

By Mr. Thiess:

Q. When did you first learn, Mr. Kaufman, that the petition for rehearing in the Root case in the Third Circuit Court of Appeals was denied on August 6th, 1935? Do you remember that? A. Well, I suppose—the Judge must have called me up and told me about it, Judge Haight, if I heard it at all, I must have heard it from him, because he was
2723 always in close touch with me.

Q. Now, isn't it a fact that—I would now like to call your attention to your testimony in the second trial, page 2779.

Mr. Harris: May we locate that, please?

Mr. Thiess: All right.

Mr. Harris: If you read excerpts from the first trial I would like an opportunity to look at the record. I don't suppose you have a duplicate of it.

Mr. Thiess: No.

Mr. Harris: We haven't any copy of that. All right, sir.

2724

By Mr. Thiess:

Q. "Q. In this case weren't you hired by the Universal Oil Company throughout this period?

"A. I was hired throughout this period, but not in this particular case, I was hired generally. My name does not appear on the record in that case.

"Q. I know that, sir. Was it not in August?

"A. No, the opinion was filed on June 26th and the order denying the petition for re-hearing was filed August 6th, and the latter part of August is when

Judge Davis spoke to me about the loan, the Stokley loan."

Mr. Harris: Now, will you read the next, too?

By Mr. Thiess:

Q. "Q. Are you definite it was the latter part of August?

"A. I think so, yes." Did you so testify?

A. I must have.

Q. Now, Mr. Kaufman, isn't it a fact that you put this request from Judge Davis in the latter part of August after you found out that the Root petition for re-hearing was still pending until August 6th, 1935? A. Not at all, sir. I wouldn't perjure myself for the Universal, or the Root, either. I told you what the facts were, and you can draw your own inference. You were there during the course of the trial, on both trials, I think you were with the F. B. I. constantly. 2726

Q. Oh, I know I was there. A. You were with the—tried to get next to the jurors, I understand.

Q. Oh, you do. A. To try to convict me.

The Master: Mr. Kaufman, just try and answer the questions.

The Witness: Well, I will tell you some facts, if I dare. I will tell you some facts about this, if you want to know something, I will give you some real facts. This man was out more to convict me than any man in the world, he had one thought in mind. 2727

By Mr. Harris:

Q. Referring to Mr. Thiess? A. I beg your pardon? Referring to Mr. Thiess, yes, sir. He only had one thought in mind, to convict me for the paltry few dollars that you hope to get in this case. I know what you tried to do, and I can prove it.

2728 Mr. Thiess: Mr. Kaufman, you have no basis for any such——

The Witness: Well, I have.

Mr. Thiess: —statement as that at all.

The Witness: You keep on with me and I will show you some day what I intend to do. I don't intend to let this matter rest right here. I am not interested in this case, not at all, sir.

Mr. Thiess: That is not true, there is nothing——

The Witness: Well, I will show you whether it is true or not.

2729 Mr. Thiess: All right.

The Master: Mr. Kaufman, just answer the questions that are asked you.

The Witness: Thank you, I am sorry.

The Master: Other matters can be left out.

By Mr. Thiess:

Q. Now, isn't it a fact, Mr. Kaufman, that you were away on your vacation during the month of August, 1935? A. I have been away on many vacations. Now, whether I was away on a vacation in August, '35, or not, I can't recollect.

2730 Q. Now, I show you a letter from J. Warren Davis to Thomas H. Cooley, Esq., under date of August 9, 1935, and ask you whether that refreshes your recollection.

Mr. Harris: Let me see a copy of that.

Mr. Poore: You have a copy. It was included in our list number 1.

Mr. Harris: Before you answer, Mr. Kaufman, give me an opportunity to look at this letter.

The Witness: Certainly.

Mr. McCullough: What was the date of it?

Mr. Neuman: August 9, 1935.

Mr. Harris: All right.

By Mr. Thiess:

Q. Before answering this question as to whether that refreshes your recollection, Mr. Kaufman, I want to call your attention to the fact that Judge Davis testified that the party mentioned in this letter was you.

Mr. Harris: When did he so testify?

Mr. Thiess: The record, page 2540.

Mr. Neuman: The second trial.

Mr. Harris: Second trial?

Mr. Thiess: Second trial.

Mr. Harris: All right, sir. 2732

By Mr. Thiess:

Q. Does that refresh your recollection—— A. I don't know anything about——

Q. —that you were on vacation at that time? A. —that letter.

Q. Well, does it refresh your recollection at all that you were on vacation at that time, in August? A. It does not refresh my recollection at all.

Q. When did you first definitely promise Judge Davis that you would make this loan, Mr. Kaufman? A. My best recollection is that it must have been in August, it may 2733 have been in the latter part of July, but I think it was in August. Now, I may be wrong about this, but my statement is that it must have been in August.

Q. That you promised to make the loan? A. Not promised to make the loan, no, not promised to make the loan.

Q. Well, that was the question I asked you. A. Oh.

Q. When did you first definitely promise Judge Davis that you would make the loan? A. I never promised Judge Davis I would ever make the loan. Will you correct that first answer of mine? I never promised Judge Davis that I would make the loan.

Q. Did you ever state to Judge Davis that you would make this loan? A. No, sir.

Q. Now, in September or early October of 1935, when this loan was in contemplation, you had in excess of approximately fifty thousand dollars on deposit in your bank, did you not? A. I had how much, do you say?

Q. In excess of fifty thousand dollars. A. You have a record there. If I——

The Witness: Mr. Master, may I see the record that was impounded in the District Court? Did Your Honor get that?

The Master: Do you have that?

The Witness—Showing the photostat of exactly what moneys I had. There is no use of guessing about it when we have the facts.

The Master: Do you have that?

Mr. von Holst: It is among the papers that we first saw here in the Master's office.

The Witness: There was some question about it. Don't put this of record.

(Discussion off the record.)

By the Master:

Q. Was that in the second or the first trial? A. No, during the disciplinary proceedings.

Q. The Masters' proceedings? A. The Masters'.

Mr. Harris: Well, I think we better get it. Can we get it from that?

By Mr. Harris:

Q. There were several bank accounts, weren't there, Mr. Kaufman? A. I beg your pardon? Oh, yes, numerous bank accounts.

The Master: Have you seen a photostat of that record, Mr. Thiess?

Mr. Thiess: No, no, we have not.

Mr. Harris: You did have——

Mr. Thiess: We have a bank statement.

Mr. Harris: —one bank statement, that is, the Public National Bank of New York, is in your record, Mr. White, but I understand that is only one of several bank accounts——

The Witness: That is correct.

Mr. Harris: —that Mr. Kaufman had.

Mr. von Holst: That is right. 2738

The Witness: Now, what is your question? I think I can answer it.

By Mr. Thiess:

Q. Well, the question was merely a broad question of whether you had in excess of fifty thousand dollars on deposit in your banks at the time, September or October, when this loan to Stokley was in contemplation. A. Fully that.

Q. That is all. A. Fully that. In fact, I think you will find in the testimony that my bank balance never ran below fifty thousand dollars. I think you will find that on the record there. 2739

Q. Now, can you tell me, in view of the fact that you had ample funds to make the loan in your banks, why it was that you waited until October 4th, until October 4th—from October 4th to October 24th, to make the arrangements to make the loan? A. From October—I don't get the——

Mr. Harris: Well, I don't think there is any evidence that he waited from October 4th to some later date. He didn't see Stokley until later.

Mr. Thiess: Well, I would like——

Mr. Harris: The record shows he saw Stokley on the 25th of October.

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The Master: 22nd.

Mr. Harris: 22nd of October.

Mr. Poore: 24th.

Mr. Harris: 24th or 25th.

By Mr. Thiess:

Q. Did you tell Judge Davis that the money would be available on or before October 4th? A. I didn't tell Judge Davis anything.

Q. I call your attention to a telegram from J. Warren
2741 Davis to Thomas H. Cooley, under date of October 4, 1935, and ask you whether that would refresh your recollection.

(The witness examined the telegram.)

A. This is a telegram from Judge Davis to Cooley?

Mr. Thiess: Yes, and Judge Davis testified that the party referred to in that telegram was Morgan S. Kaufman.

The Witness: I can't help that, that has nothing to do with me.

Mr. McCullough: What page was that, Mr. Thiess?

Mr. Thiess: What is that?

2742 Mr. McCullough: The testimony.

Mr. von Holst: 2540, second trial.

Mr. McCullough: Well, that is same one as before.

Mr. von Holst: Yes.

The Witness: What was the question first you asked me, what was the first?

Mr. Harris: I don't see anything on 2540. That is a letter that you just marked in evidence.

Mr. Neuman: Page 2272.

Mr. Harris: Oh.

Mr. von Holst: My mistake.

Mr. Thiess: Now, will you read the question?

Mr. Harris: Just a minute, may we look at it?

Mr. Thiess: All right.

Mr. Harris: We are not very familiar with these things. I think you should, in fairness to the witness, read the testimony to him, the examination of Judge Davis.

Mr. Thiess: All right.

The Master: Yes, suppose you read the testimony.

Mr. Harris: 2272.

Mr. Thiess: I am reading from the record, 2272: "Q. Now, Judge Davis, on October 5 you sent a telegram, Government's Exhibit 113 in evidence stating, 2744
"The money has been definitely promised from a reliable source." Now, I wish to know whether the reliable source was Mr. Kaufman. "A. Yes."

Mr. Harris: Continue, please, the next two questions.

Mr. Thiess: "Q. And "I think it will be available in a few days", you say. Didn't Mr. Kaufman say——

Mr. Harris: No, "Did Mr. Kaufman".

Mr. Thiess: ". . . . Did Mr. Kaufman say he was going to get the money in a few days?

"A. That I do not recall."

Mr. Harris: Well, then, I think you want to read 2745
the next, to show that he has corrected the fifth to the fourth.

Mr. Thiess: "Q. I wish to correct: It is October 4, not October 5, on Exhibit 113."

The Witness: Now, what is your question?

Mr. Harris: Did you hear——

The Witness: Yes, I heard the testimony. The question is why I waited from October——

Mr. Harris: No, the question was, did you promise——

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By Mr. Thiess:

Q. Did you promise—— A. I didn't promise Judge Davis anything, I simply told him at the time that, when he discussed the matter with me, the first time and practically the only time, that if the title was good and the value was there, I would give it consideration—substantially in those words.

Mr. Harris: I think, Mr. Thiess, that was not the question. The question was, didn't he tell Judge Davis that the money would be available in a few days?

2747 The Witness: No, I never told Judge Davis anything about availability of the money, or anything of that sort.

By Mr. Thiess:

Q. Did you have any conversation with Judge Davis in which you told him that the money would be available? A. No, I never—I never discussed that question with anybody, about money being available.

Q. Did you discuss with Judge Davis on or about October 4, 1935, the Stokley loan? A. I did not.

Q. You did not? Then according to your testimony am I correct, you did not discuss the Stokley loan with Judge
2748 Davis at any time except the one time in the—as you have testified—in the summer or about August of 1935? A. That is absolutely correct, with the exception that after Stokley had been there, if I remember correctly and after I had agreed with Stokley to loan ten thousand dollars, provided he would put up as additional security—I wasn't satisfied with the security he offered, I wanted additional security, and he added to what he originally intended to give me, he added a tenement house, a pet grove that he lived in himself, this tenement house he had built, costing between thirteen and sixteen thousand dollars, as additional security, and then it was that I told him I would loan him ten thousand

dollars. I never discussed it with Judge Davis, but I do recall Judge Davis calling me one day, and said, "The amount is thirteen thousand, or fourteen, thirteen or fourteen thousand dollars, instead of ten thousand."

I said to him, "Why," I said, "Judge, my understanding with Mr. Stokley is ten thousand dollars, and if he wants any additional money," I says, "I will call the whole thing off." I says, "I am not ready to give it to him, I am not going to give it to him, and I am not going to make the loan" —words to that effect.

He called me up later and he said, "It was a mistake in reading a telegram", or something of that sort, "He is satisfied to accept the ten thousand dollars as a loan." 2750

I said, "That is perfectly all right, we will go through with it upon that proposition."

That is the only time that Judge Davis ever spoke to me about this.

By the Master:

Q. When were these conversations over the telephone? A. That was between the time that Stokley was here and the time I loaned him the money, whatever date Stokley was here and the time I loaned him the money.

Q. Then—— A. The time I delivered the check to Mr. Lord, rather. 2751

Q. Then you think Judge Davis was mistaken when he said in his telegram of October 4th—— A. Oh, no, he wasn't mistaken.

Q. He said—— A. I can tell you what he was thinking of. He thought, by the statement that I had made, that if the—if the title was good and if the value was there I would consider it, and he assured me, the old man assured me, and he was satisfied, he told me that the value was forty thousand dollars, he told me that the value of that property was at least forty thousand dollars.

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By Mr. Harris:

Q. Who is "he"? A. Judge Davis told me that in the first statement that he ever made, and I simply turned to him, and I said, "If the value is there and the title is clear I will give it a lot of consideration", or, "I will consider it", words to that effect. That was the whole thing to it.

By the Master:

2753 Q. Well, however, in this telegram Judge Davis does say that the money has been definitely promised from a source which he testified was yourself. A. That is correct.

Q. You feel that that was a mistake on his part? A. I never discussed it with him, I am sorry, but that is—it may have been the Judge's intention, but that is not—that was not the fact, that I can recall, I am quite sure that I never made any statement to Judge Davis about it.

Mr. Harris: What are you going to do with this telegram, Mr. Thiess? Are you going to mark it?

Mr. von Holst: It will go in later.

Mr. Thiess: That will go in.

2754 Mr. Harris: Let's mark it at the present time for identification.

Mr. Thiess: All right.

Mr. Harris: So we will know what it is.

Mr. Thiess: Marked for identification as Amici Exhibit 83.

(Photostatic copy of telegram dated October 4th, 1935, from J. Warren Davis to Thomas H. Cooley was marked Amici Exhibit for Identification 83. By agreement of counsel the copy was later marked Amici Exhibit 83.)

By Mr. Thiess:

Q. Well, now, going back to the statement you have just made, Mr. Kaufman, was this call that you got from Judge Davis before or after you met Stokley? A. After.

Q. And did you have any other calls or conversations with Judge Davis respecting this matter? A. I think that is the only one that I can recall with reference to this matter.

Q. You never talked to him personally about the matter? A. I may have, I don't know.

Q. You don't remember? A. I used to see him fre- 2756
quently, go down on the train, and I would go down on the train, or I would meet him somewhere.

Q. But you have no recollection at the present time that you talked to him about this loan on any of the occasions? A. He may have confirmed that to me at some other time, that that was a mistake, or something of that sort, it was just a—the statement I just made about him, that it was—that he had received a message that it was more than ten thousand dollars that this man wanted, and I said, "I am not interested," and, "Forget about the whole thing." I says, "I agreed with him on ten thousand dollars, that is the amount that I was going to loan him, providing he would put in all the additional security," which he did. 2757

Q. You knew, did you not, that Stokley was exceedingly anxious to close this deal in order to save money that he would get from his fruit crop in the year 1935? A. Well, I assume the man was anxious to close, to get his property back. Otherwise he wouldn't have made a trip all the way from Florida here.

Q. Well, were you advised by Judge Davis that unless the arrangements were made immediately that Stokley might lose his fruit crop? Have you any recollection of that? A. Lose his fruit crop?

Q. Yes, in 1935. A. I don't recall. There may have been something said on that, I can't recall. It may be "yes" or "no", that answer.

Q. Well, were you aware of the fact that Mr. Stokley was being pressed by the Town of Mount Dora to take up the tax lien on his property? A. No. I understood that this tax lien was taken over by the borough, the tax lien,—they paved the—they paved the streets in front of the property, and that amounted to twenty-nine or thirty thousand dollars, I think Stokley told me that he paid eight or nine thousand and couldn't pay any more, on account of some condition of the fruit, and so the borough sold the property and bought it in themselves for the amount of the tax lien of thirty thousand dollars. Then it was up to him—the borough agreed
2759 to compromise this claim for ten thousand dollars, and that was the claim, and they would give him a deed, or give to anyone a deed, a deed for the property, for ten thousand dollars. He came to me and discussed it with me and——

Q. You mean Davis, by "he"? A. No, Davis—I am talking about Stokley, now.

Q. I see. A. I am going now, when Davis discussed it with me, he discussed it casually, he didn't know the—he simply stated, "If you care to make the loan, why, go ahead. I have got a relative,"—or friend, whatever it was—"and he wanted to borrow ten thousand dollars. The property is worth forty thousand or more. I know the property, I have been there, and the security," he says, "will be ample, and
2760 the legal rate of interest in Florida is eight per cent."

Mr. Harris: Eight per cent.

A. (Continued) If I remember correctly. Now, when I met Stokley he outlined the thing to me, and then it was that he told me that there was an additional tax of twenty-eight hundred dollars, not a borough tax, but a county tax, but that he had enough oranges to pay for that, but he couldn't pay it until February.

And then I asked him, "What other property have you got outside of this that is free and clear of liens and encumbrances?"

And he referred to his own home, with a Pet Grove of two and a half acres, which was the finest orange grove in that section. He also referred me to a tenement house, cement tenement house that he had built, with stores, that two years and a half before that cost him thirteen thousand dollars.

I says, "Would you be willing to add that in as additional collateral security and give me a deed of all of this property, and I will in turn give you back an agreement? I don't want your property, Mr. Stokley, I will help you out, but it is understood that you pay it back in five years"—pay so much a year, I think it was twenty-five hundred a year, at 2762 the end of four years, which would make it five years, at eight per cent interest, which was the legal rate of interest in Florida, and he agreed to do that, and Mr. Lord, who was the Assistant United States—First Assistant United States Attorney at Newark, or Trenton, went down to close the deal for me.

He wanted his own lawyer to close the deal, and I said, "No," I said, "if you will pay this man's expenses I will ..." —"If you will pay this man's expenses and let him go down there and close the deal and see that I get a good title and see that everything is properly recorded, why," I said, "I will go through with the deal," and he was some- 2763 what reluctant about putting in these other properties, which was free and clear of liens, but he finally consented, and so today I have the mortgage on not only the piece of property that was conveyed to me by the Borough of Mount Dora, Mr. Lord went down there with my certified check for ten thousand dollars, he went down to the borough, he went down to Florida, he went to Mount Dora, and the town officials gave him a deed, sold it right there in his presence and gave him a deed made payable—made out to me for the property that was—that had the lien on it, that was paved, for—I forgot what the pave was, it was twenty-nine or thirty thousand dollars with the

pave alone—and outside of that he got me a quit-claim deed from Charles Stokley and his wife, and he got me a warranty deed, a deed in fee simple of the Pet Grove, his own home, and the cement block, which cost him thirteen thousand dollars.

That is the security I have for the ten thousand dollar loan, that I consider worth between fifty and sixty thousand dollars today. I can get my money tomorrow.

Now, what happened was this. After Mr. Lord came down there, represented me, he sent me back a guarantee search of title, I think it is made out in the Florida Title and
2765 Trust Company, of some kind, for ten thousand dollars, guaranteeing the title, he brought me back a warranty—a deed from the Borough of Mount Dora for the property, a quit-claim deed from Mr. and Mrs. Stokley for that particular property, a warranty deed for the other properties, an insurance policy upon the house, and I guess that is about all that he mailed back to me, which I have, or which is in the hands of the Government, now, in the United States Court.

By Mr. Harris:

Q. And a counterpart with the repurchase agreement, I suppose? A. I signed an agreement at that time, he sent me
2766 back a copy of the agreement, everything was properly recorded, I gave him an agreement, he held a right to buy it back any time within five years. He has had a lot of hard luck, the old fellow, and I have given him a chance to buy it back, and he wrote me only here a short time ago that if I wanted the money he would try and arrange to get a loan and pay it back to me as soon as I wanted it, but I have left matters in status quo until this whole thing was cleared up. I didn't want to muddy the waters, I just wanted to leave the thing stand. I wouldn't take it if he offered me twice the amount today. I want the thing to take its natural course, and when this thing is over I can get my money with-

in fifteen minutes down there, I could sell that property for twenty-five thousand dollars, in twenty-four hours, at a forced sale. It would bring at least that.

By Mr. Thiess:

Q. Did you ever check the property down there personally? A. No, I never was down there. I have got reports, though.

Q. Who did you get the report from, Mr. Kaufman? A. From a great many people, assessors there, and people of that sort. 2768

Q. Could you tell me who the assessors were? A. I couldn't tell you now.

Q. You don't remember who you got the reports from? A. No. If there is any question as to the value I know you gentlemen would know. If that was not the value of that property, why, you would find out in very short order.

Q. Now, isn't it a fact, Mr. Kaufman, that it was not until you received the twenty-five thousand dollar check from the Universal Oil Products Company that you were ready to make this loan? A. Why—to make the loan of ten thousand dollars?

Q. Yes. A. Why, I just told you that I had fifty or sixty thousand dollars in the bank. 2769

Q. But you didn't make it until after you got twenty-five thousand dollars from Universal, is that correct? A. I didn't make it because—I made it on a certain day; it wasn't because I ~~didn't get~~ the twenty-five thousand, it wasn't on account of the twenty-five thousand dollar check that I received from the Universal.

Q. Well, you made the loan after you had received the check? A. Of course, I made it afterwards, the date would show that, I received the Universal check on a certain date, and I made the check to B. F. Lord, attorney, who represented me, on another date, subsequent to that time.

Q. Now, how were the arrangements made for you to come to Trenton on the 24th to meet with Stokley?

Mr. Harris: October 24th?
Mr. Thiess: October 24th.
Mr. Harris: '35?
Mr. Thiess: '35.

A. Why, when I met—after I talked to Judge Davis he told me that he expected Stokley down this fall or winter——

2771 *By Mr. Thiess:*

Q. You say, "After I talked to Judge Davis"; what conversation—— A. Why, Judge Davis and I met on the train and he discussed the——

Q. That was in August, latter part of August? A. Whatever it was, I went there, it was the latter part or the early part, whatever it was, he told me that he expected Stokley down here, or he would have Stokley down here within a couple of months and he would let me know, and so he didn't know the details of the property, he said, "I would be very glad to have you talk to him."

I said, "I will be very glad to come down", and on a certain day I was called on the telephone to come down and
2772 see Judge Davis, and I went down, whether it was that day or the next I can't recall, but I went down to see Stokley.

Q. And did he call you in New York? A. Yes, sir.

Q. And did you go down the next day? A. I did.

Q. And that was on October 24th, 1935? A. Whatever date that was, I don't remember the date.

Q. And did you there meet with Judge Davis and Mr. Stokley? A. I was ushered into Judge Davis's chambers and he introduced me to Stokley. That is the first time I met Stokley in my life. I never met him before.

Q. Now, when you met in Judge Davis's chambers isn't it a fact that Judge Davis, Mr. Stokley, Mr. Lord and your-

self first discussed the terms of the agreement in the chambers? A. No.

Q. You have no recollection of that? A. I said; no.

Q. Then do you have any recollection that Mr. Lord was called into Judge Davis's chambers and the form of the agreement was discussed, and arrangements were made to have Mr. Lord close the deal, in Judge Davis's presence? A. No, in my recollection of it it was that Judge Davis introduced me to Stokley, and after talking there a few minutes about Florida he said, "Gentlemen," he said, "of course," he says, "you know that Mr. Stokley is the gentleman I discussed with you sometime ago, about the loan." 2774

I said, "Yes."

"Well," he says, "suppose you go into the other room and discuss it, into the library, and all I want to say to you is that you can rely upon any statement Mr. Stokley makes."

We went into the library, and my impression is that I—I found Mr. Lord there sitting at a table. Mr. Lord's remembrance is that he was called in, and the Judge directed, he directed, the Judge directed him to take us into the library. However, he may be right and I may be wrong, I don't know just what the facts are, but the facts are we went into the library, Stokley, myself and Mr. Lord, and then he started to tell us about the nature of his properties. He had his deeds 2775 there. He had everything there.

Q. And then was this agreement dictated in the library? A. This agreement was dictated in the library, in the presence of Mr. Lord, Mr. Stokley and myself.

Q. And who dictated the agreement? A. I dictated part of it, I feel—I think I dictated most of it, and I think Mr. Lord might have dictated a few sentences, I don't recall, but I think he had something to do with the dictation of it.

Q. And did you leave that night for New York? A. Well, I will tell you, we got through with dictating it, I think it was mostly dictation, it was getting late and I had

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a dinner engagement in New York, and I said to Mr. Lord, I says, "I wish you would complete this, and when the stenographer has it ready you send me the copies and if they are in accordance with our understanding," I said, "I will sign them both and send you a certified—a certified check for ten thousand dollars, and you go down there and close the deal."

If was understood at that time that Mr. Lord was to go down there, because when I said to him, "What about the title and looking after the closing of this deal?", "Why," he said, "I have an attorney down there that I paid a couple
2777 of hundred dollars," I think he said.

"Well," I said, "that won't be satisfactory." I said, "Now, Mr. Lord, would you like a vacation and go down to Florida?"

"Well," he says, "I think I would like it."

I said, "Are you willing to pay the expenses of Mr. Lord going down there?"—to Mr. Stokley, and he hemmed and hawed a little, and he said, "Yes, I will pay the expenses", which I finally think he did, I think he paid his railroad fare, because he stopped at his own house, and I think Mr. Stokley will tell you that he either paid him ninety-two, or ninety-five, or a hundred dollars, I forget
2778 what it was, and that is how the thing happened.

Q. Did you see a rough draft of the agreement before you left for New York? A. No.

Q. Now, isn't it a fact, Mr. Kaufman, that the agreement as dictated did not contain any provisions for payment by Stokley of the County and State taxes due on the property in the amount of twenty-seven hundred dollars? A. The agreement that I signed?

Q. The agreement as originally dictated did not contain it. A. Oh, well, it must have—because he spoke of it then and there, he spoke of the twenty-seven hundred dollars then and there.

Q. Do you have a definite recollection of that? A. Well, if you have the agreement there I think I can tell you in a minute.

Q. Well, it isn't—it is in the agreement. A. Well, then, if it is in——

Q. But what I am asking you for is, was it in the agreement as originally dictated? A. Whatever the agreement shows is what we dictated, and if that agreement doesn't show it, it isn't there. If it does show it, it is there.

(Discussion off the record.)

2780

By Mr. Thiess:

Q. Now, I would like to call your attention, Mr. Kaufman, to a telegram under date of October 24, 1935, from Thomas H. Cooley to J. Warren Davis.

Mr. Harris: 24th, you say?

Mr. Thiess: 24th, October 24th.

Mr. Harris: On the date of the conference——

Mr. Thiess: Yes.

Mr. Harris: —in Trenton.

Mr. Thiess: Have you got a copy of that telegram?

Mr. Harris: Yes, I have.

2781

(The telegram was shown to the witness.)

By Mr. Thiess:

Q. And in that connection I also wish to call your attention to a letter written by J. Warren Davis to Thomas H. Cooley under date of October 25, 1935.

Mr. Harris: What was that included in?

Mr. Poore: That is Exhibit 111.

Mr. Harris: Of what?

Mr. Poore: Second trial.

(Discussion off the record.

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By Mr. Thiess:

Q. And in that connection I would also like to call your attention to this letter from Davis, Judge Davis, to Cooley, under the same date, October 25, 1935.

Mr. Harris: What is that in the trial, 115?

Mr. Neuman: 115.

Mr. Thiess: 115.

(The letters were shown to the witness.)

By Mr. Thiess:

2783 Q. And I also call your attention to the agreement, Mr. Kaufman,——

Mr. Harris: Will you pardon me just a minute?

Mr. Thiess: Yes, The particular paragraph in the agreement——

(The agreement was shown to the witness.)

Mr. Harris: Now, what is the next one?

Mr. Thiess: I just called his attention to the paragraph in the agreement.

Mr. Harris: Oh, yes, about the County taxes, State and County taxes.

2784 The Witness: Yes.

By Mr. Thiess:

Q. Now, Mr. Kaufman, does this correspondence refresh your recollection that at the time the agreement was written, the first time the agreement was written, you had no knowledge about the twenty-seven hundred dollars of taxes and that they were to be included in the agreement, and hence could not be included in the original—— A. No.

Q. —document? A. It does not refresh my recollection at all, because Mr. Stokley told us that when he was here, about the twenty-seven hundred dollars, and I think if you

will read—if I remember correctly in the testimony the Judge has explained all of that, in the first or second trial, that he didn't recall, that he was under the impression there was twenty-seven hundred dollars additional or something of that sort, that he explained that he wasn't familiar, he didn't know that fact, and evidently the telegram and the letter exchanged on the road, whether it was one thing or—it was on practically the same day or the following day that he had written it—but I know nothing about these letters that you speak of, all I know is that Stokley told me, in the presence of Mr. Lord, that there was twenty-seven 2786
hundred dollars due and that he was notified that that was the exact amount from the officials of the borough, or the County and State tax, at the time he came down to see us.

Q. And you have a definite recollection of that at this time, notwithstanding this correspondence that I call to your attention? A. Absolutely, that has nothing to do with this correspondence, that is a matter that the Judge and the collector, or someone, were discussing that I know nothing. I have heard of it in court, but that is about all I know about it.

Q. You had had no preliminary negotiations with either Mr. Cooley or Mr. Stokley prior to the time that you met Mr. Stokley in Judge Davis's chamber? A. That is correct. 2787

Mr. Thiess: I would like to mark the telegram dated October 24, 1935, from Thomas H. Cooley to Judge J. Warren Davis for identification as Amici Exhibit 84.

Mr. Harris: Well, why don't you mark it in evidence?

Mr. Thiess: All right, then, I will mark it in evidence.

Mr. Harris: If you want to mark them all in evidence—

Mr. Thiess: It seems to me it expedites the matter.

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Mr. Harris: Sure, go right ahead, if that is all right with the Master.

The Master: Yes, that is all right.

Mr. Harris: I don't question that they were sent.

Mr. Neuman: Is that true of that other telegram, too?

Mr. Von Holst: We will fix that up afterward.

(Photostatic copy of telegram dated October 24, 1935, from Thomas H. Cooley to Judge J. Warren Davis, was marked Amici Exhibit 84).

2789 The Witness: I would like to see one of those letters for a minute.

Mr. Thiess: Here are both of them.

The Witness: I would like to call your attention to the fact that I didn't know it was in there. Where is that first letter there?

Mr. Thiess: This is the first, and this is the second (indicating).

The Witness: I desire to call your attention to this fact:

"Mr. Stokley may be able to raise the $13,000 from some other source but frankly Mr. Kaufman does not
2790 want to take the property unless it is free and clear of taxes and he is unwilling to put more than $10,000 into it."—exactly what I told Judge Davis, and I didn't know it was in that letter, but——

By Mr. Thiess:

Q. When did you tell Judge Davis that? A. I told you about it in this testimony.

Q. I say, when did you tell Judge Davis that? Did you tell him the day of the 24th? A. I don't recall just what

date, but he called me up, and I said to him, "I won't go more than ten thousand on this property," I says, "Forget the whole deal," or something like that. That confirms exactly what I said. I didn't even—I didn't even recall it.

Q. Well, then, was that on this telephone call, that you talked to Judge Davis, that you told him this? A. I don't recall whether it was a telephone call or a meeting on the street, it was something along that line. I do recall telling him, he conveyed the message to me that it was more than ten thousand dollars.

I says, "Forget the deal, I won't go more than ten thousand dollars." 2792

Q. And that was before these letters were written? A. I don't know whether it was before or after, or since. I am telling you what I recall very distinctly, and it confirms it in that letter. I didn't see that until just this minute.

Q. Well, Judge Davis apparently, according to these letters, didn't know about it, so it must have been— A. Well, it must have been either before or after, I can't argue with you on this.

Mr. Harris: I wouldn't say—these letters don't indicate Judge Davis didn't know about it, at all.

The Witness: I am telling you what the facts are. I didn't see it until this minute. 2793

Mr. Harris: He couldn't have written what he did if he didn't know about it before, when he says Mr. Kaufman is unwilling to lend more than ten thousand dollars.

The Witness: I remember it very distinctly.

The Master: Well, the letters speak for themselves.

Mr. Thiess: Yes, the letters speak for themselves.

I would like to offer in evidence as Amici Exhibit 85 the first letter of October 25, 1935, from J. Warren Davis to——

2794 *Morgan S. Kaufman—For Amici Curiae—Direct*

Mr. Harris: That is the one-page letter?

Mr. Thiess: One-page letter, and as Exhibit 86, the second letter, two pages, under October 25, 1935, from J. Warren Davis to Mr. Cooley.

(Photostatic copy of letter dated October 25, 1935, from J. Warren Davis to Thomas H. Cooley, Esq., was marked Amici Exhibit 85.)

(Photostatic copy of letter dated October 25, 1935, from J. Warren Davis to Thomas H. Cooley, Esq., was marked Amici Exhibit 86.)

2795

By Mr. Thiess:

Q. Mr. Kaufman, did you tell Judge Davis about this provision of the twenty-seven hundred dollar taxes prior to the time that Mr. Davis wrote this letter of October 25th? A. I didn't say anything to Judge Davis about the twenty-seven hundred dollar taxes.

Q. You never said anything to him? A. Nothing about the twenty-seven hundred. There was no question about—I didn't discuss it with Judge Davis at all, my whole matter was with—was with Mr. Stokley and Mr. Lord, and what Mr. Lord told Judge Davis in my absence, or what Stokley
2796 told Judge Davis in my absence, I don't know. I didn't confer with Davis, Judge Davis, at all after he was introduced to me.

By Mr. Harris:

Q. After Stokley was introduced to you? A. After Mr. Stokley was introduced to me.

By Mr. Thiess:

Q. Well, now, this letter states——

Mr. Harris: What is that, Exhibit 86?

Mr. Thiess: Two-page letter, 86, Amici Exhibit 86.

Mr. Harris: 86.

By Mr. Thiess:

Q. "Again if your telegram is correct in that you say that 'this is our agreement heretofore had with Stokley' and that it was so understood by him, why did you send this telegram at this time telling me something that you assumed I perfectly well understood. Mr. Stokley may be able to raise the $13,000 from some other source but frankly Mr. Kaufman does not want to take the property unless it is free and clear of taxes and he is unwilling to put more than $10,000 into it." 2798

Now, that would indicate, would it not, that you discussed this matter with Judge Davis before this letter was written?

A. I told you that I had originally met Judge Davis and we discussed it, and he wanted—wanted to know if I cared to make the loan of ten thousand dollars.

I said if the property—if the security was ample and the title was good I would give it consideration, and he then told me about—he didn't know sufficient about it, and all that. However, after I had agreed with Stokley—that is my recollection—he called me. Now, whether it was before or at the 2799
time, I don't see how it was before, but either the next day or the day before, or at the time, said that they wanted thirteen—they wanted fourteen thousand, I think, instead of thirteen thousand, it may have been thirteen thousand—I said, "I am not interested," I said, "My agreement with him was ten thousand dollars." I says, "Forget the whole deal and we will call the whole deal off," or, "Tell Stokley to forget about it, I am not going to loan him the money, if he wants any more than ten thousand dollars."

Q. Well, that statement that you made must have been the one that prompted Judge Davis to put that in this let-

2800 *Morgan S. Kaufman—For Amici Curiae—Direct*

ter? A. I don't know what prompted Judge Davis, I am simply giving you the facts, and what was in Judge Davis's mind, or what was in Cooley's mind or any other person's mind, I don't know. I never saw these letters when they were coming, or telegrams, or anything. I am simply giving you what I can recall. This is a matter that happened seven years ago.

By Mr. Harris:

Q. Did you ever see the letters before they were produced
2801 by Mr. Thiess today? A. Oh, yes, some of these letters were discussed in court up there, when Judge Davis was on for trial, for the first or second trial, I forget——

By Mr. Thiess:

Q. Well, when you—— A. They had so much correspondence and letters I didn't even pay any attention to what was going on.

Q. When you talked to Judge Davis about this additional three thousand dollar taxes, in round numbers——

Mr. Harris: He doesn't say he discussed three thousand dollars in taxes.

2802 The Witness: I didn't say anything about taxes. I said they wanted an additional loan.

Mr. Harris: He said he wanted an additional loan.

The Witness: Well, the thirteen thousand or fourteen thousand instead of ten thousand dollars, I said I wasn't interested, forget about it, tell Stokley to forget about the loan.

By Mr. Thiess:

Q. Well, when you discussed this matter with Davis over the telephone—— A. It may have been before, it may have been after.

Q. Let me ask you—did you tell him at that time that the matter, that the question of this three thousand dollars had been taken care of in the agreement. A. Oh, I never discussed that with him.

Q. You never told that to Judge Davis? A. I don't know what he was driving at, I don't know what he is driving at now, three thousand dollars, all I know is, Stokley told Mr. Lord and myself, sitting in the library, that there was twenty-seven hundred dollars due for County and State tax, but that he had sufficient money, by selling the oranges the following February, to pay that. Now, of course, we realized 2804
that that was a lien against that property, and then I said to him, "What other property have you got?" and then he outlined to me the other property that he had.

Now, perhaps if he hadn't mentioned the twenty-seven hundred dollars I wouldn't have taken the other security, but when he mentioned there was another lien, I made up my mind I was going to get additional security, so that in the event he didn't pay that twenty-seven hundred dollars I would be amply secured, and that was my reason, and I told him that, and we put it into that agreement on the day that it was made. Otherwise I never would have known it.

I hope I have cleared the atmosphere here on this twenty-seven hundred dollars. 2805

Q. Well,—— A. I don't mean to speak so loud, but that is my——

Q. —let me ask you this, Mr. Kaufman, is if your recollection that the agreement as first written, first dictated, contained anything about the five tenement houses? A. Oh, yes, the agreement as written there is what was sent to me by Mr. Lord, whether it was the following day or two days thereafter, I don't recall the exact time, but I left it with Mr. Lord, and I can assure you, I knew Mr. Lord, he is one of the finest men in New Jersey, and he has a very responsible position.

Q. I would now like to call your attention to two letters, one under date of November 14, 1935, from Judge Davis to Charles L. Stokley, and a letter under date of November 21, 1935, from Judge Davis to Mr. Stokley. Now,——

Mr. Harris: Just a moment. All right, sir.

(The witness examined the letters and the agreement.)

The Witness: Oh, are you waiting for me? Go right ahead.

2807 *By Mr. Thiess:*

Q. Do those letters refresh your recollection, Mr. Kaufman, that the matter of the five tenant houses was not in the original draft? A. No, those letters don't mean anything to me, because I got this—I left the matter entirely, I dictated most of it and I left the matter with Mr. Lord. Lord sent it down to me and I signed it, and it was witnessed in the presence of my two secretaries. Now, if it is in the agreement it was there at the time. If it is not in the original agreement, why, then it isn't there.

Q. Well,—— A. Does the agreement provide for that?

Q. The agreement provides for it. A. Well, then, it was
2808 in there at the time.

Q. Well, then, how do you account for this statement in Judge Davis's letter to Mr. Stokley,—— A. I can't account for anything that Judge Davis—you will have to ask—

Mr. Harris: Let's see what statement he is referring to.

The Witness: Pardon me.

By Mr. Thiess:

Q. —reading:

"We have the agreements between you and Mr. Kaufman which have been executed by Mr. Kaufman.

Mr. Lord will bring them down with him and have you and Cousin Delta sign them and leave one with you and bring the other back to Mr. Kaufman. They are just as they were dictated when you were here with the exception of the addition of the five houses and the conveyance of them by deed together with the Cement Building and the Pet Grove, rather than a mortgage, upon which Mr. Kaufman insisted."

A. Well, I insisted upon these, exactly, I insisted and that is why they put them in there, I insisted that they go in there and they are in there. I think if the agreement is in there, the agreement is there. 2810

Q. But he says, Judge Davis says, "They are just as they were dictated . . . with the exception", so they couldn't have been—— A. Well, that——

Q. That couldn't have been in the first—— A. What he meant to say was——

Mr. Harris: I don't read that in the letter. A. (Continued) What he had in his mind I don't know, but I know that was our agreement, that was part of our agreement at the time. Mr. Stokley was there.

Mr. Harris: Also, Mr. Thiess, I don't read this—— 2811

By Mr. Thiess:

Q. This doesn't change your recollection at all? A. No, not at all.

Mr. Harris: And I don't read the letter the way you do, Mr. Thiess, at all.

The Witness: All I can say is the agreement itself, and the agreement provides for it.

The Master: The letter and the agreement will both speak for themselves.

Mr. Thiess: Speak for themselves.

The Witness: That is right.

The Master: As a basis of argument hereafter.

Mr. Thiess: I would like to introduce in evidence —is that all right with these letters?

Mr. Harris: If you tell me these have been identified by Judge Davis and have been sent by him I will take your word for it.

Mr. Thiess: That is right.

Mr. Harris: They are just carbon copies.

Mr. Thiess: That is right.

Mr. Harris: All right.

Mr. Thiess: I would like to offer in evidence as Amici Exhibit——

Mr. Harris: But I wish you would ask Judge Davis about them, just to get them on the record, but go ahead for the time being.

Mr. Thiess: —as Amici Exhibit 87 the letter from Judge Davis to Charles L. Stokley under November 14, 1935, and as Amici Exhibit 88 a letter from Judge Davis to Mr. Charles L. Stokley under date of November 21, 1935.

(Photostatic copy of copy of letter dated November 14, 1935, from Judge Davis to Mr. Charles L. Stokley, was marked Amici Exhibit 87.)

(Photostatic copy of copy of letter dated November 21, 1935, from Judge Davis to Mr. Charles L. Stokley was marked Amici Exhibit 88.)

The Master: You haven't the night letter that came in between those, to which Judge Davis refers?

Mr. Neuman: We have that.

The Master: Has that been offered

Mr. Neuman: It hasn't been offered yet.

Mr. Thiess: Why not offer it?

The Master: Why don't you add that, to make it complete?

Mr. Neuman: I will get it. It is the one between the 14th and the 21st.

The Master: Well, I just noticed in the letter of the 21st he refers to a night letter which was received the day before from Mr. Cooley.

Mr. Neuman: That is Government Exhibit 86 in the first trial. That is one that you just obtained yesterday. You have the original here.

2816

Mr. Harris: And also a telegram referred to in the letter of November 14th.

The Master: I should think they ought to be offered to make the correspondence complete.

Mr. Thiess: All right, let's have them.

Mr. Neuman: That is Government Exhibit 143.

Mr. Thiess: Let's get them and offer them.

Mr. McCullough: In the second trial?

Mr. Neuman: In the second trial.

Mr. Thiess: I would also offer in evidence as Amici Exhibit 89 telegram from Charles L. Stokley to J. Warren Davis under date of 11-12-1935.

2817

(Photostatic copy of telegram dated 11-12-1935, from Charles L. Stokley to J. Warren Davis was marked Amici Exhibit 89.)

By Mr. Thiess:

Q. Had you met Mr. Lord before you met Stokley on October 24th in Trenton? A. Yes, sir.

(Discussion off the record.)

The Master: Well, I understood the question to be, had he met him before that?

Mr. Thiess: Yes.

The Witness: In Trenton.

Mr. Harris: Before he met him on the 24th, in Trenton.

The Master: I see.

By Mr. Thiess:

Q. When did you first meet Mr. Lord, do you remember? A. I can't recall, maybe a year or two before that.

Q. Did you before your meeting with Mr. Lord at the time that this agreement was drawn know anything about
2819 Lord's experience and ability as a lawyer? A. Only from hearsay.

Q. And that hearsay came from whom? A. Why, I think one day in a discussion with—at lunch, or somewhere by the —between Judge Davis and one of the other judges, it may have been Thompson, they were discussing law clerks, and Judge Davis said there that he was one of the finest lawyers, really a great lawyer, and he gave him a very fine standing. Of course, you don't have to take my word for it, I think some of the New Jersey bar will vouch for it, that he is a very fine and very able lawyer.

Q. When Mr. Lord went down to Mount Dora on this mission did you request him to check the title of the prop-
2820 erty, the Mount Dora property? A. I told him that we wanted to see that everything was in proper shape, and check the title, or whatever it was, I can't recall exactly what I said to him about it, but I wanted to make sure about it, that everything was properly recorded, et cetera, and so forth.

Q. Well, then, you specifically asked him to check the title, did you? A. With other things, I may have said that, yes.

Mr. Harris: You mean to examine the title?

The Witness: To examine—you know, up in Penn-

sylvania, up where I come from, we don't have guaranteed titles, like they do down in some other sections, and you do possibly here in Philadelphia, but we usually examine the title, the lawyer goes over and searches a title, what they call a search of title, but I didn't know down there that they had these regular title companies, for a small amount of money they insure these titles, and that is what I had in mind.

Mr. Harris: Well, Mr. Master, I call your attention to the fact that in Exhibit 87 Judge Davis, writing to Mr. Stokley, said that the title insurance policy 2822
was to cover the property to be conveyed by the town, and says nothing about a policy to cover the additional, so-called additional security. That is in the second paragraph of Exhibit 87. Is that your understanding, Mr. Thiess,——

Mr. Thiess: That is my understanding.

Mr. Harris: ——that that was all that was to be insured, only the town-conveyed property?

Mr. Thiess: That is right.

Mr. Harris: That is right. That was my understanding.

By Mr. Thiess: 2823

Q. Now, then, did you instruct Mr. Lord to check the title also to this additional security, Mr. Kaufman? A. I didn't give him any specific instructions. He as a lawyer knew what was necessary to close a deal of that kind. The most important thing I had in mind was to see that the papers were properly recorded, see that—if they had a title insurance, why, of course, we wanted that, and if there was any checking of or searching of title, he ought to have done that, but I didn't go into details with Mr. Lord. I knew he was a man of ability and he knew what was necessary to close a deal of that kind.

Q. You didn't require a guarantee policy covering the additional security? A. They may have spoken about it at the time, he may have said something to me at the time, but I don't recall it.

Q. But you—— A. I was very glad to get it, however.

Q. Did you get a guarantee policy on the additional security? A. I think there is a policy, a title policy of insurance, I have left with the government, and that is in the name of the Florida—I forget what the name is, some insurance company guaranteeing titles.

2825 Q. Is it your understanding that that covers the additional security? A. Well, I don't know, the paper speaks for itself. It isn't a question of what my understanding is, as to what that covers, it is there, and I offered it in evidence before the Grand Jury—I had it, rather, they had it, and then it came up here before the trials at different times. The last time I saw it was in my disciplinary proceedings, in which counsel offered the guarantee policy of insurance.

Q. Do you remember requesting Mr. Lord to get a title guarantee policy on the additional security? A. I told him, I requested him to go down and complete the transaction, whether it required searching of title or guaranteeing of title, and recording of deeds, and getting insurance—I didn't

2826 go into details. He brought all this stuff back to me.

Q. Well, this question is merely, Mr. Kaufman, whether you requested him—— A. I may have.

Q. —to get this—— A. I may have requested him, yes, I don't——

Q. You don't remember now? A. I don't—the chances are I did.

Q. Did you ever examine the guarantee policy to see whether it covers all the property conveyed to you—— A. I examined——

Q. —by the town of Mount Dora? A. —at the time, but whether it does or not, I don't know at this time. The policy speaks for itself.

Q. Well, you do not know at the present time, then, whether or not—— A. Well, I——

Q. —the guarantee policy does include this additional security? A. I can't recall. I read it at the time, but whether it does or not I don't know now. The policy speaks for itself, whether it does or whether it does not.

Q. Do you know whether it covers all the property conveyed by the town? A. Well, I tried to tell you just now, I don't know now what it contains. I read it over at the time, but I don't recall whether it guarantees them all, or it doesn't. I know that—— 2828

Q. Well, at the time——

Mr. Harris Well, just a minute, Mr. Thiess. Mr. Master, I submit that the witness's recollection has been sufficiently probed. The document speaks for itself, and we examined it at the time, and we all know what the state of the document is.

The Master: Yes, I think, Mr. Thiess, he has stated he doesn't remember now, and he has probably read it, but he is not sure just what was in it.

By Mr. Thiess:

Q. Well, now, can you tell me what payments have been made, and under the terms of the agreement, and what is the condition of the property with respect to payment of taxes to date? A. Well, I think there is about—well, the last time that Mr. Stokley was here was in February of this year, and there was a little over thirteen thousand dollars due on the entire amount, and there would be interest from February, on. 2829

Q. Then no payment has been made to you by Stokley on the principal? A. On the principal, no.

Q. And he is in arrears to the extent of about three thousand dollars in interest? A. That is correct.

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Q. And what is the condition of the taxes today, do you know that? A. I think the last he told me was, in fact, about, around ten or eleven hundred dollars in taxes.

Q. That are due? A. I think so, twelve hundred, something like that.

Q. Have you made any effort to check that at all? A. I have.

Q. Have you been down there to check it? A. No.

Q. How did you check that? A. I inquired from Mr. Stokley.

Q. Just from Mr. Stokley? A. Yes.

2831 Q. Now, did you investigate at the time to ascertain whether the twenty-seven hundred dollars county taxes were paid—— A. They were.

Q. —by Mr. Stokley, as provided? A. They were, I think he sent me a receipt and wrote me a letter, and I think I offered the letter in evidence there before the Grand Jury at the time, if you have got the Grand Jury minutes.

Q. Now, as I understood your testimony, you did not at any time before or after you made this loan see the property on which the loan was made? A. That is correct. I think at one time, I am not sure, but I think the letter was offered in evidence, where at the second or third—first or second

2832 instalment, he wrote me that if I needed the money he could get some neighbors to pay off the entire amount, and I offered that letter before the Grand Jury when I was called down there, and if you have the Grand Jury minutes you will find it there somewhere, if they put it in. Will you gentlemen look and see if you have the Grand Jury minutes?

Mr. Harris: We don't, never seen them.

The Master: They are looking at them now.

Mr. Harris: Grand Jury minutes—you mean certain excerpts?

The Master: Excerpts, yes.

(Discussion off the record.)

By Mr. Thiess:

Q. As I understand your testimoney, Mr. Kaufman, you have been in Florida practically every year since 1935? A. That is correct.

Q. And did you ever make any inquiries about this property other than from Stokley, Davis and Lord? A. None whatsoever, except I got an appraisement of it from some bankers at the time, at the time before the—when they asked me about it, before the Grand Jury, and I made some appraisement of the property. I got an independent appraisement of this property for the benefit of the United States 2834
Attorney.

Q. When did you get that? A. Around the time I was called, in 1938 or '40.

Q. Did you check from time to time to see whether Stokley was paying the taxes on this property? A. He wrote me from time to time.

Q. That is the only check you had? A. I think he sent me some receipts, he sent me some receipts for the different taxes.

Q. Did you check from time to time to see whether all the taxes were paid? A. I think at that time I wrote to the tax collector for the benefit of the United States Attorney and the Grand Jury, they sent me an entire list of every- 2835
thing, and I turned it all over to them.

Q. But did you check it before that? A. Only from what he wrote me, no.

Q. I see. A. I took his word for it. I might say, right there,——

(Discussion off the record.)

Mr. Harris: I think we should try to get that.

The Master: Which?

Mr. Harris: Anything the United States Attorney has showing the appraisement of this property, or

receipts for taxes, communications with Stokley on payment of the taxes, I think that is relevant on this issue.

The Master: No one has specified that.

Mr. Theiss: We didn't know about it; first I knew about it.

Mr. Neuman: There is nothing apparent from there.

Mr. Harris: Well, if it is in the hands of the United States Attorney I think it will be well to see it.

2837 The Master: Well, it might be well, although as I understand the witness it was long after the transactions we are now investigating took place.

Mr. Harris: Well the question, though, is whether he was prudent in the matter of making a loan, whether he followed it up with reasonable prudence to see that the taxes were paid; it might have something—I can imagine Mr. Thiess making an argument that this was a bogus loan because Mr. Kaufman made the loan and paid no attention to it.

The Witness: Oh, he sent me statements every year, I received letters and every six months as to how

2838 the taxes stood.

Mr. Harris: While the United States District Judge that tried the case directed the jury that this was a legitimate business transaction, nevertheless I assume Your Honor will feel you want to reach your own conclusions, although influenced perhaps by what some Judge felt, and if those documents are in existence they would be relevant to the inquiry, unless counsel on the other side are not going to claim that this was not a legitimate business transaction.

The Master: Well, may I ask the witness——

By the Master:

Q. I thought I understood you to say that you had this done for the benefit of the parties that were making the investigation? A. He had written me continually and they wanted to know whether I had an independent appraisement made, they weren't sure about the value and they weren't sure about the taxes.

Q. By "they" you mean the—— A. Some of the Grand Jurors.

Q. Yes. A. And I think the United States Attorney, I wouldn't say that. 2840

Q. Yes. A. But, however they inquired about it.

Q. So you got an appraisement made? A. I said to them—so I telephoned down and I wanted an independent appraisement, and I got an independent appraisement from the president or officer of a bank and a real estate man, and I got a list of all the taxes, which corresponded exactly to what this man had said. You will find him, if he is to be called here as a witness, you will find the man to be one hundred per cent honest and he will put—he will tell you exactly what the facts are, perhaps better than I can. The fellow means well. He has had a lot of bad luck, they haven't been doing very well in their fruit business, and 2841
they have had frosts, they have had insects down there, at one time he said, "I am ready to send you thirty-five hundred dollars, but I have got to do some irrigation," they had a dry season that year, and they irrigated the land and he needed the money for that purpose.

Q. Well, now, Mr. Kaufman, this appraisement that you had made was after the investigation had started? A. That is correct.

Q. That would be, then, 1941 or 1940? A. It would be 1940.

Q. 1940.

The Master: Do you think that is material?

Mr. Harris: I would think that was some evidence of what it was worth a few years before.

The Master: Well, yes——

Mr. Harris: It might have been changed, though.

The Master: —it would be some evidence of what it was worth, but would it be evidence of what the parties thought it was worth at that time?

Mr. Harris: Well, he said it was represented to him as being worth so much. If it appears that that representation is correct, it seems to me it is relevant.

2843

The Master: Well, if counsel on either side think it is relevant I will endeavor to get those papers. It doesn't seem to me at the moment it would have much bearing on the questions at issue.

The Witness: If there is any question about the value I think these gentlemen would know in a moment, if it wasn't worth that money, the men on the other side here, they will tell you in a minute whether it was or wasn't.

Mr. Harris: Well, I don't understand anybody has as yet claimed in either the criminal prosecutions or in any of the Grand Jury proceedings, or here,

2844

that the property was not well worth the loan.

The Witness: There is no question about that.

Mr. Harris: They insured a part of it for ten thousand dollars.

The Master: No, I haven't heard any such contention.

Mr. Harris. Well, if it isn't claimed, then there is no point to what I am suggesting.

The Master: Do you intend to make an argument that the property was not worth the amount of the loan, Mr. Thiess?

Mr. Thiess: No, not that it isn't worth the amount of the loan, no.

Mr. Von Holst: No, we don't make that argument.

Mr. Harris: Or that the security was not ample for the loan.

Mr. Thiess: There is some evidence in the case, I think, that the property was worth twenty thousand dollars.

The Master: I think there was some evidence——

Mr. Thiess: That is the way I remember it.

The Master: —in this proceeding——

Mr. Harris: Well, if it isn't claimed that the security was not ample, why, then there is no point—— 3846

The Special Master: If it subsequently does come up and you want the papers, I will try to get them.

Mr. Harris: I do think if there are impounded letters from Mr. Stokley from time to time reporting on the state of the taxes——

The Witness: I had a bunch of letters.

Mr. Harris: —it is relevant to show Mr. Kaufman kept up with his loan, as a business man would, an ordinary, legitimate business transaction.

Mr. Von Holst: We think that is material, too. We would like the Master to get all letters which Stokley wrote to Mr. Kaufman from the time of the loan to the time of the investigation. 2847

The Witness: Some of the letters——

Mr. Von Holst: We don't think anything after that is material, that he may have written to Mr. Kaufman regarding taxes or anything else down there.

The Witness: Some of the original letters—pardon me, if I may enlighten you on this subject—some of the original letters I delivered to the United States Attorney's office there, they selected, they read over a lot of them and selected three, two or three or four

of them, and directed to be put into the evidence in that case before the Grand Jury, I recall that.

Mr. Harris: Was that in New York or in Philadelphia?

The Witness: In New York. I wasn't before the Grand Jury in Philadelphia. If you have got the record there of my testimony you will find that it is in that testimony.

Mr. Neuman: Well, I can say this, there are two letters in that excerpt (indicating).

The Witness: May I see those letters, please?

2849

(An excerpt from the New York Grand Jury minutes was shown to the witness.)

The Witness: You haven't the original letters here, have you, I mean, attached?

Mr. Neuman: No.

The Witness: There is a letter written May 11th, for your information. Pardon me, right here, may I read this letter, to show, they have the original letter:

"May 11. For your information, have both——

2850 *By Mr. Harris:*

Q. May 11th, what year? A. In 1937.

Q. All right, letter from whom, to whom? A. This is from him to me.

Q. Stokley? A. Stokley to me:

"May 11. For your information, have both the city, state and county taxes paid on my contract with you, but as you know, on December 20 we had a frost that damaged the orange crop and the markets are taken advantage. So, do not believe we will receive much of the remainder of our crop. I am doing my best.

I believe with one or two good crops I can pay it. However, if you demand settlement I find I can get a loan here from a neighbor.

Thanking you for bearing with me thus far,

Very truly yours,

STOKLEY."

Now, he goes on, on May '38, and in '37 he wrote me:

"I am sorry to explain how little I realized out 2852
of my fruit crop, but as doubtless you know" I can't make out the word—"has been in your northern market. After all, taxes have amounted to almost $5,700. This, as you know, since you made me the loan.

I am going to do my best to make another payment on interest this year. I will be frank with you, I have made some payments on another obligation or I could have paid you more.

I shall do my best in the future and if I have one or two good crops and the fruit sells only fair price, I will be able to pay up in full, and I hope you will be patient with me, that I am doing my best. 2853

Yours truly,

C. L. STOKLEY."

There are dozens of these letters. Some to me, they are all in—I don't know what became of them, I had a bunch of them there.

By the Master:

Q. You think those letters are still in the possession of the United States Attorney or the—— A. They may be, I had them here, most of them here, at the first and second

trial, because I remember one of the lawyers waved a bunch of letters there, he said, "I can read dozens of these letters to you." I think you will find it in the argument of Mr. Gainsburg.

Q. Letters similar to those that you just read into the record? A. Exactly.

Mr. Neuman: I think the record ought to show that the first letter that Mr. Kaufman read was written in May, 1938, and that the second letter was dated April 7th, 1937.

2855 The Witness: It says there May, '37—is that '37 or '38?

(The transcript was shown to the witness.)

The Witness: This is in May, 1938.

By Mr. Harris:

Q. The first one you read? A. The first one, and in '37 he wrote me—oh, I am speaking, I see, that is correct.

By Mr. Thiess:

2856 Q. Well, then, I take it from this statement that we have just had from you that Mr. Stokley did not live up to the terms of his agreement to pay back annually on the loan and to keep up the payment of the taxes? A. That is right, he gave me the reasons for it, every six months or every year, and I knew I was amply secured and I let the old man proceed with it, because I can walk in there tomorrow and get every dollar that I have invested, together with interest.

Q. Have you any recollection at the present time when you got the first payment by Mr. Stokley on the loan, or as interest? A. No, let's see—I must have got it in '36. I know I got, along at the end of the year, I got some interest.

Q. In 1936? A. Yes, if you have the amounts there I will agree with it.

Q. We haven't got them, we don't know. A. It is in the testimony.

Q. Have you got any records showing that? A. I may have something in my ledger down there, but that would only be a ledger account from '37 or '38, on. My ledger only begins in '38.

Q. Well, did you——

By Mr. Harris: 2858

Q. Did Mr. Stokley testify to that in detail? A. Oh, yes, he gives you the dates and everything else, in the testimony, you will find it all there, as to the dates and when he paid it and how he paid it.

The Master: Well, you expect to examine Stokley, I think you said, do you not?

Mr. Neuman: Well, he doesn't have any records, either,——

The Witness: Oh, yes, he has.

Mr. Neuman: —as we understand, Mr. Master, he doesn't have any records.

Mr. McCullough: Checks? 2859

Mr. Neuman: There is one check which was produced, which, the way I understood Mr. Stokley's Grand Jury testimony, was written, issued, after the investigation had started.

The Witness: Oh, no, he was down there before the —during the investigation, he was down there for twenty-one days.

The Master: I will make inquiries to see if we can locate any of those letters, and if we can we will have them produced.

The Witness: Everything was paid in check, and not by cash, whatever he has paid me, and that was all for interest.

By Mr. Thiess:

Q. Have you any recollection as to what month in 1936 this first payment was made? A. I have not.

Q. Did you make any investigation of your ledgers before you came down here to ascertain that? A. No.

Q. Would your ledger show that? A. After '38, it would.

2861 Q. Not before 1938? A. No.

Q. So as at the present you have no records which show? A. Yes, I have a record somewhere, but I can't put my hands on it. I have it somewhere. I can't recall where I have got it. I know I have it somewhere, and the record shows that I had it at the time that I testified before the Grand Jury and before the—in the trial of the cases?

Q. Do you know whether Stokley paid anything on April 1st, 1936, which was the first date that a payment came due? A. He paid in 1936. As to the date, I couldn't tell you.

Q. You don't know? A. No.

Q. And I gather from what you said just a moment ago that you may have some records to show that? A. I may

2862 have. If I find it I will be very glad to give it to you.

Q. Would you do that?

By Mr. Harris:

Q. Check books and things, any old check books? A. I have no check books. The Government has everything.

By Mr. Thiess:

Q. I want to show you a certified copy of the agreement between yourself and Mr. Stokley, Amici Exhibit 55, which shows that it was not recorded until March, 1937. Can you

state why it was that this was not recorded until March, 1937? A. You mean the original agreement?

Q. The agreement, yes.

By Mr. Harris:

Q. The repurchase agreement? A. The repurchase agreement. Yes, I can state that, now. There is a clause in this, if I recollect correctly, which provides—well, I didn't record this agreement. This agreement, you understand, was recorded by Stokley.

2864

Mr. Thiess: Right.

The Witness: And this agreement provides, amongst other things, the party of the first part agrees and covenants that he will not encumber any of the above mentioned properties and that when the party of the second part pays to him the ten thousand dollars mentioned above, together with the interest, he will convey to him or his nominee all of the above mentioned properties encumbered by him.

By Mr. Harris:

Q. Unencumbered by him? A. Unencumbered. It wasn't necessary for me to record this, because I had the deed recorded, I had the absolute conveyance to me, but in order, for his own protection, he, a year or two after that, recorded —asked me to acknowledge it, which I did, and he recorded it for his own protection, to see that I wouldn't encumber the property.

2865

By Mr. Thiess:

Q. You have no knowledge of why he delayed until that time to record it? A. No, I assume he wanted it for his own protection.

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Q. Have you ever investigated to ascertain whether under the laws of Florida it would be necessary for you to foreclose on this property in order to take advantage of Stokley's default in payment? A. No, I don't think so, I think I would have a right to walk in there and take possession of the property, I don't know.

Q. But you have never looked that up? A. I haven't looked up the law. If I have a deed of the property I assume I can walk in, it is my property.

Mr. Harris: I don't think you can.

2867 The Witness: He has defaulted. It may be possible that I would have to go through some little proceeding of some sort, down in Florida, but I don't think there would be any question about it, unless he paid it there would be nothing to it.

Mr. Harris: Off the record,——

(Discussion off the record.)

The Master: We will adjourn until two o'clock.

(Recess, 12:50 until two o'clock P. M.)

After Recess

2868 Present: Counsel as before noted.

Evidence on Behalf of Amici Curiae (Continued):

Morgan S. Kaufman, recalled.

Direct Examination (Continued):

Mr. Thiess: This is the telegram that was referred to this morning by the Master, with respect to the completeness of documentary evidence on the letters we put in this morning, and I would like to offer that in evidence.

Mr. Harris: You have seen this, Mr. White, have you? Have you seen this telegram?

The Master: I think I have.

Mr. Thiess: I would like to offer this telegram from Thomas H. Cooley to Hon. J. Warren Davis, under date of November 20, 1935, as Amici Exhibit 90.

(Copy of telegram dated November 20, 1935, from Thomas H. Cooley to Honorable J. Warren Davis, was marked Amici Exhibit 90.)

By Mr. Thiess: 2870

Q. It is a fact, is it not, Mr. Kaufman, that this Stokley transaction was the first and only time that you ever loaned money to a person upon property that you had never seen?

A. How is that question, again? Read that for me.

(The question was repeated by the reporter, as follows:

"Q. It is a fact, is it not, Mr. Kaufman, that this Stokley transaction was the first and only time that you ever loaned money to a person upon property that you had never seen?")

Mr. Harris: Just a minute, I am going to object to that, now, on the ground that whether it was the first or the tenth or the hundredth time, it is immaterial, because counsel have conceded that the security was ample. The attractiveness of an eight per cent return on a good investment I think is all the incentive that anybody needs to make a loan of that sort, so I don't see the relevancy of whether he might have been so fortunate as to get an investment like this earlier, or not. 2871

The Master: Well I rather think that is irrelevant, Mr. Thiess. I will sustain the objection.

Mr. Thiess: All right.

By Mr. Thiess:

Q. How many times, Mr. Kaufman, had you personally talked with Mr. Stokley with respect to the agreement in 1935? A. Only once, that one day that he was there at Trenton.

Q. And how many times had you talked to Mr. Lord with respect to the agreement in 1935? A. I talked to him that day.

Q. That day, you mean the day that you were in Judge Davis's chambers? A. I may have called him on the phone
2873 afterwards, I can't recall, but I didn't talk to him after that, I may have called him on the phone once or twice, I don't know, but I would say that that was the only time, unless I may have called him on the phone.

Q. Now, can you tell what occasioned the delay from October 24, 1935 to November 14, 1935, when you issued your ten thousand dollar check in connection with this agreement?

Mr. Harris: What was the date of the check, again?

Mr. Thiess: November 14, 1935.

2874 A. I really don't know. It may be that I didn't get it in time, or I delayed in sending it out. I didn't realize it was that length of time, when they asked me a similar question before. Is it October 24th?

By Mr. Thiess:

Q. October 24th. A. I don't really know what it was, whether it was my fault, or I didn't get it in time, or some reason for it.

Q. You have no definite recollection why it was? A. I don't recollect why.

Q. Well, do you know, have you any recollection what caused the delay from November 14, 1935, the date that the check was issued, to November 25th, when the deal was closed?

Mr. Harris: Are you asking him the same thing again?

Mr. Thiess: No.

The Witness: No, ——

Mr. Harris: Oh.

A. That was up to Mr. Lord, can tell you that. I think I mailed that check either that day or the next, and I don't know why he didn't go down. He may not have had occasion—I mean, have had time to go down before. I don't know. These were all dated in Florida the 25th of November. 2876

Mr. Harris: Isn't there some correspondence, Mr. Thiess? Have you finished interrogating the witness on that?

Mr. Thiess: Yes.

Mr. Harris: Because I didn't want to make any observation or suggest anything to the witness, but my recollection is there is some correspondence showing that they were searching the title, the trust company was searching the title and getting the policy ready. Wasn't the delay in Florida? I think the documents show that. Isn't that right? 2877

Mr. Neuman: We have asked the questions——

The Witness: I don't know why.

Mr. Neuman: — to refresh his recollection.

The Master: The witness says he doesn't know.

Mr. Harris: The witness doesn't know. That is the reason I waited. I wanted to find out whether those documents are in evidence. If not, we will put them in. I think the telegram you just offered said

he policy would be ready on—let's see, Amici Exhibit 90, dated November 20th, from Mr. Cooley, says, "Will be ready to deliver deed and title insurance to Mr. Kaufman next Monday," from which it would appear that—November 20th—that the delay was occasioned in Florida.

The Witness: What date was the 25th, Monday?

Mr. Harris: Well, it was as early as Mr. Lord could get there after that.

Mr. Thiess: I don't believe it makes any difference what day of the week that was.

2879 Mr. Harris: But I recall he got there on Sunday and closed on Monday.

Mr. Von Holst: I think that is right.

Mr. Thiess: That is the way I recall it.

By Mr. Thiess:

Q. Isn't it a fact that all the arrangements for the loan which you made to Mr. Stokley were taken care of by Judge Davis prior to the time which you met with Mr. Stokley in Judge Davis's chambers? A. That I don't know. The only arrangement I had was with Mr. Stokley and Mr. Lord.

Q. You don't know of any arrangements that Judge
2880 Davis made with Stokley prior to the time that you met Stokley in Judge Davis's chambers? A. I don't know a thing about that, only what I have heard here, and what I have heard in court—but you are asking me, I suppose, at the time.

Q. At the time, yes. A. I know nothing about it.

Q. Now, it is a fact, is it not, that all the details respecting the completion of the loan for the agreements entered into between you and Mr. Stokley in Judge Davis's chambers were taken care of by Judge Davis. A. No,—taken care of by myself and Mr. Lord, every detail that is contained in that contract were gone over in my presence and the pres-

ence of Mr. Lord and in the presence of Mr. Stokley, including the twenty seven hundred dollars that you spoke of.

Q. And it it your position that Judge Davis had nothing to do with that? A. He had nothing to do with it so far as I know, so far as I know.

Q. I call your attention to a statement by the Public National Bank and Trust Company, your statement covering the month of October. Do you recognize that?

The Master: Public Bank and Trust Company, of what city? 2882

Mr. Harris: National Bank, of New York.

Mr. Thiess: National Bank and Trust Company——

The Master: New York.

The Witness: What is the question, do I recognize it?

(The statement was shown to the witness.)

By Mr. Thiess:

Q. Yes, as your statement from that bank as of that time. A. I assume so.

2883

Mr. Harris: Let me see it, please. With Mr. Kaufman's permission we have asked his attorney and received from him photostats of all of the bank balances—have you got them here?—and if you don't mind, I will check this with what he has given me, but I assume we want all of them.

Mr. Thiess: Well, I might as well get this other one in, also,——

Mr. Harris: All right.

Mr. Thiess: —and you can check both of them.

Mr. Harris: All right.

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By Mr. Thiess:

Q. I ask you the same question with respect to this bank statement for the date November 7th——

The Witness: I think these were all delivered to the United States Attorney's office.

(The statement was shown to the witness.)

By Mr. Thiess:

Q. That is your bank statement? A. My bank statement.

2885 The Master: Same bank?

Mr. Thiess: Same bank.

Mr. Harris: Now, these seem to be a little more complete. Here is one, and I understood, Mr. Kaufman, that they were introduced——

The Witness: That is correct.

Mr. Harris: —in the disciplinary proceedings.

The Witness: That is correct.

Mr. Harris: Public National Bank and Trust Company of New York, account with Morgan S. Kaufman, from September 16, 1935, through January 6th, 1936, and it contains the items shown on the first exhibit which you offered, plus additional balances, I

2886 mean, it carries it back a little earlier, and forward a little further, but I think that all the information contained on your two statements will be shown on this one, and if you will ask Mr. Kaufman if that's—if you wish—if that is a complete statement for that period, I think that—your first statement, for instance, starts with October 3rd——

Mr. Thiess: That is right.

Mr. Harris: —balance of $189.50——

Mr. Thiess: Yes.

Mr. Harris: —and October 31st, which this winds up with, a balance of $33,661.22.

Mr. Thiess: That is right.

Mr. Harris: The second one starts with November 2nd, and shows a balance of $33,811.22——

Mr. Thiess: Yes.

Mr. Harris: —and ends with November 30th, with a balance of $23,287.04. $23,287.04.

Mr. Thiess: That is right.

Mr. Harris: Now, in other words, what I have given you includes all of this——

Mr. Thiess: All of that.

Mr. Harris: —and just starts at an earlier date 2888
and goes a little later.

Mr. Thiess: That is right.

Mr. Harris: I would like to substitute the more complete statement, if you have no objection.

Mr. Master: May I see those?

Mr. Harris: I think what I have given you——

Mr. Thiess: Have you got the other bank statements——

Mr. Harris: Yes.

Mr. Thiess: —prior to this? Could we see them?

Mr. Harris: No, not prior to that, but I think what I have handed you——

Mr. Thiess: How about subsequent to this? 2889

Mr. Harris: What I have handed you, as I understand it, is a photostat of a bank statement which was rendered to Mr. Kaufman by the bank.

The Witness: A photostat of a photostat.

By Mr. Harris:

Q. A photostat of the bank statement—— A. That is right.

Q. —which was rendered you by the bank? A. That is right.

Mr. Harris: Whereas I understand that the statements presented by Mr. Thiess were later statements, gotten up for the purpose of the trial by the bank, breaking this down for the months of October and November, 1935, and are not actual copies of the statements rendered to Mr. Kaufman—or, it may be that mine is——

Mr. Thiess. That looks more like a monthly statement to me.

Mr. Harris: Yes.

2891 The Witness: I think you are mistaken, I think that is a monthly statement.

Mr. Harris: This is another one:

The Witness: This is a photostat of a photostat that we got.

Mr. Harris: Well, this one is all right.

The Witness: These are all from the bank.

Mr. Harris: They are the same thing.

The Witness: I don't know whether they are right or wrong. I assume they are correct.

Mr. Harris: They are the two months, October and November.

2892 Now may I also hand you, Mr. Thiess, a statement of the First National Bank of Scranton with Morgan S. Kaufman, a savings bank account, showing the balances between July 19th, 1934 and November 14, 1935, at which latter date the balance to the credit of Mr. Kaufman was $35,555.36.

And may I also present a statement of the First National Bank of Scranton, Pennsylvania, apparently a general account, with Morgan S. Kaufman, running from December 22, 1934 to October 30, 1936, and showing on October 22, 1935, a balance of $2,417.99, and on November—when was this check given?

Mr. McCullough: 14th.

Mr. Harris: —14th, 1935, a balance of $6,679.31.

And another statement of the First National Bank, Scranton, Pennsylvania, with Morgan S. Kaufman, Personal, showing among other things a balance as at October 2nd, 1935 of $5,795.06, and as on October 29, 1935, of $4,792.56, and on November 2nd, 1935, the date shown on here nearest November 14th, 1935, a balance of $5,625.89. Now, those have been——

The Witness: Wait a minute, I thought you had them all.

Mr. Harris: Have I got any others?

2894

The Witness: I don't know. Have you got the Sterling Bank?

Mr. Harris: No, I haven't. We would like to have that.

The Witness: Well, I thought that you didn't have the Sterling Bank.

(The witness produced a statement.)

The Witness: Did you have the one of the First National Bank?

Mr. Harris: First National Bank of Scranton?

The Witness: Yes.

Mr. Harris: I had two of those.

2895

The Witness: Well, that is the only thing I found, now, I don't know what this is. Is this the Sterling Bank or the First National—the other one, the photostat? I think that is about the only thing I have.

Mr. Harris: We haven't got the Sterling National Bank of New York. Now, here is a photostat of a bank account with the Sterling, the Thrift Department of the Sterling National Bank and Trust Company of New York with Morgan S. Kaufman, showing a balance on the first of October, 1935—and there were no changes until the 12th of November—of $11.

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854, and on the 12th of November, when he withdrew $10,000.00, a balance of $1,854.

That is the same as this one (indicating).

The Witness: Same as this. I thought you had it; I wasn't sure.

Mr. Harris: This carries it a little further along, carries up to 1937, but you aren't interested in that.

Mr. Thiess: Here you are. You were just interested in making the statement on the record, I presume?

2897 Mr. Harris: What?

Mr. Thiess: You were just interested in making those statements?

Mr. Harris: I was just presenting those to you, and I assume that since you were interested in the balances that he had in October and November, 1935, that if you aren't satisfied with those, you will ask the witness whether they were correct or not.

Mr. Thiess: We were satisfied with his statement that he had that balance.

Mr. Harris: Well, you began to examine some statements so I thought we better give them all to you.

Mr. Thiess: Well, that is perfectly O.K.

2898 Mr. Harris: I think it shows something over eighty thousand dollars, as I added it up roughly in my head, at the critical period.

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 91 Morgan Kaufman's bank balance in the Public National Bank and Trust Company of New York for the month of October, and as Amici Exhibit 92 Morgan S. Kaufman's bank balance in the Public National Bank and Trust Company of New York for the month of November.

Mr. Harris: 1935.

Mr. Thiess: 1935.

Mr. Harris: Well, I object to those unless as part of it these other bank statements go in, showing what the total amount was Morgan Kaufman had in the banks at that time. There is no relevancy unless it is to show whether or not he was able to lend ten thousand dollars without waiting for the fee from Universal.

Mr. Thiess: Well, isn't your statement on the record sufficient for that?

Mr. Harris: Well, do you accept that?

Mr. Thiess: Why, you just read it off. Yes, we will accept it. We don't want to encumber the record with those things. 2900

Mr. von Holst: You developed with Mr. Kaufman that he had over fifty thousand dollars.

Mr. Harris: Well, then, I would like to mark these others myself.

The Master: Very good.

Mr. von Holst: Is it necessary to encumber the record?

Mr. Harris: Is it necessary to have any of them? What is the point of having any of them?

Mr. von Holst: Because these have other relevancy. 2901

Mr. Harris: I don't know what it is.

Mr. Von Holst: To identify the check and the deposit.

Mr. Thiess: The check and the deposit.

Mr. Harris: We admit he received the check of twenty-five thousand dollars from Universal; it is in evidence, and that he deposited it to his account shortly after he received it in the Public National Bank and Trust Company of New York.

The Master: Well, I think that second account shows that the check for ten thousand was drawn against that same account.

2902

Mr. Thiess: That is right.

Mr. Harris: We will concede that the check to Mr. Lord in connection with the Stokley transaction was drawn against that account.

The Master: Well, I think it has some relevancy, if he wants to have that on the record. You can offer these others if you want.

Mr. Harris: All right, sir, I would like to have them all marked.

The Master: Those two may be received in evi-

2903

dence.

(Statement of account of Morgan S. Kaufman in the Public National Bank and Trust Company of New York for October, 1935, was marked Amici Exhibit 91.)

(Statement of Account of Morgan S. Kaufman in the Public National Bank and Trust Company of New York for November, 1935, was marked Amici Exhibit 92.)

(Photostatic copy of statement of account of Morgan S. Kaufman with the Public National Bank and Trust Company of New York from September 14, 1935, to January 6, 1936, was marked

2904

Universal Exhibit 12.)

(Statement of Morgan S. Kaufman with the First National Bank of Scranton from July 10, 1934, to November 14, 1935, was marked Universal Exhibit 13.)

(Photostatic copy of statement of account of Morgan S. Kaufman with the First National Bank of Scranton, Pa., from December 22, 1934, to October 30, 1936, was marked Universal Exhibit 14.)

(Photostatic copy of Account of Morgan S. Kaufman with the First National Bank of Scranton, from November 9, 1933 to July 29, 1936, was marked Universal Exhibit 15.)

(Photostatic copy of statement of account of Morgan S. Kaufman with the Thrift Department of Sterling National Bank & Trust Company of New York, from August 1, 1934, to December 31, 1936, was marked Universal Exhibit 16.)

The Witness: Have you designated that check as a certified check——

Mr. Von Holst: It is in evidence as such.

The Witness: —of $10,000.00?

Mr. Thiess: It is in evidence as certified.

The Witness: The only reason I say that is, it 2906
is the only bank in New York that I could have certified, unless I sent it to Scranton and back again. I had to have it from New York City, I couldn't send the check to Scranton, unless it took a few days, and there was no sense for a thing of that sort.

The Master: May I see that? What was the date of the check given to Lord?

Mr. Harris: November 14th.

Mr. Thiess: November 14th.

Mr. Harris: I was myself engaged in seeing what apparently interrupted you, to see if that ten thousand——

The Master: Yes: 2907

Mr. Harris: —withdrawn from the Sterling National Bank and Trust Company was deposited in the Public National Bank. It doesn't seem to have been.

The Witness: No, I have that check for ten thousand dollars, that was given to Emanuel and Company for some Government bonds at that time, because when I saw that I couldn't locate—you don't have to take this, this has nothing to do with the record.

Mr. Harris: Do take it.

The Witness: All right, it had nothing to do with the ten thousand dollars, but I couldn't locate in

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my mind what became of this ten thousand dollars.

Mr. Harris: That was withdrawn?

The Witness: From the Sterling Bank, so the Sterling Bank got me a photostat, or they still had the check there, and it was drawn to Emanuel and Company, for ten thousand dollars, they are bankers and brokers in New York, upon which I bought some Government bonds, and that shows up on the face of it.

Mr. Harris: Well, this Amici Exhibit 92 shows that no deposit of $10,000.00 was made in the month
2909 of November in that account.

The Witness: No, that is the other account. I lost track of it myself until I checked up. I couldn't place the ten thousand dollars there.

By Mr. Thiess:

Q. Mr. Kaufman, were you counsel in the case of McClure et al. versus the United States, reported in 70 Fed. 2nd, 519?; A. Was I counsel in that case?

Q. Yes. A. Yes, Judge Gordon and I represented John McClure.

Q. Were you counsel—— A. Judge Gordon, Sr., I call
2910 him Judge, and not the present Judge Gordon.

The Master: I know.

By Mr. Thiess:

Were you counsel in the District Court and also in the Court of Appeals in that case? A. No, we were counsel in the District Court. We didn't go up to the Circuit Court of Appeals. We were ready to take an appeal, but the Supreme Court of the United States declared that the Act—you remember they threw out the entire Prohibition Act, and it became unnecessary to complete our record and go up.

Mr. Harris: This doesn't sound like a Prohibition case, in 70 Fed. 2nd.

The Witness: What year is that you are speaking of?

Mr. Thiess: This was in 1934.

The Witness: 1934.

Mr. Thiess: As we understand it, it went to the Court of Appeals.

The Witness: We didn't argue the case at all, but the Supreme Court of the United States had passed on it. There was nothing for us to do. I 2912
think the record had been prepared, but we hadn't gone through with it. I don't think it was filed—it may have been filed, but we never argued the case.

Mr. Harris: Well, let's get 70 Fed. 2nd. Is it reported there?

Mr. Thiess: Yes.

Mr. Harris: Well, let's get it.

The Witness: I know we didn't bother with it at that time—we may have submitted briefs or something—because it was a moot question at the time it came up to the Circuit Court of Appeals. There were sixty-five defendants. 2913

Mr. Harris: Of course, there were plenty of District Court decisions in Fed. 2nd, you know, it doesn't necessarily follow it was C. C. A.

Mr. Thiess: That is right.

(70 Fed. 2nd was produced.)

Mr. Thiess: It appears that this is a per curiam opinion.

The Witness: By the Circuit Court?

Mr. Thiess: By the Circuit Court of Appeals.

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By Mr. Thiess:

Q. Do you remember whether you filed briefs and argued it? A. Well, I think that this—it didn't come up, I don't —we may have filed briefs, but there was no argument in the case at all. It says here:

> "Accordingly it is, "—on the 26th of March— "ordered that the judgments as entered in the causes of the petitioning or moving defendants be reversed, and the causes, as to them, be remanded to the District Courts, with direction to vacate those parts of
2915 their judgments which sentence the named defendants, to dismiss the indictments as to them, and to discharge them, respectively."

But that was on, that was purely upon a—on a decision of the Supreme Court of the United States; and it was a sort of a—they had agreed at that time that there was nothing to be done about the case, it simply followed the ruling of the Supreme Court of the United States in throwing out the Prohibition Act.

Mr. Harris: That appears from the decision, if you will let His Honor see it.

The Master: Have you got the citation down there,
2916 Mr. Rodebaugh?

Mr. Thiess: Yes, the citation is in the record.

Mr. Harris: It was purely a pro forma reversal.

The Witness: That is all.

Mr. Harris: We have had cases like that, where the Supreme Court has passed on a test case, while other cases were pending, don't you know, on appeal in the C. C. A.

By Mr. Thiess:

Q. You were also of counsel, as I understand from your prior testimony, in the Kelly Springfield Tire Company versus the United States? A. That is right.

Q. And were you in that case in the Circuit Court as well as the Court of Appeals—I mean, in the District Court as well as in the Court of Appeals? A. Yes.

Q. And were you also counsel in the case of Ballwood Company versus Commissioner of Internal Revenue? A. I was one of counsel in all those cases, one of counsel.

Q. Yes, were you in the District Court—— A. Yes.

Q. —as well as the Court of Appeals? A. In the Ballwood case?

Q. Yes. A. No, the Ballwood case was a peculiar case, a tax case, in which a man by the name of Ruslander, of 2918
Pittsburgh, whom I had known for some time, had lost the case down into the Circuit Court.—he lost it in the District Court and lost it in the Circuit Court, he came to me and told me that there are two cases of a similar nature pending in the Supreme Court of the United States, and he didn't know what to do, whether to take an appeal from the court or whether to go into the Circuit Court and see if they won't withhold the sending of the mandate, and after discussion of some time I said, "The thing to do is, why take an appeal to the Supreme Court, why don't you go in and present a petition setting forth all these facts, that these two cases are pending, with the very same question involved in your case that exists in those cases?" 2919

"Well," he says, "will you go in with me?"

I says, "I will be very glad to."

We sat down and we prepared a petition, we presented it, and in this petition we simply asked that—we set forth the facts, that there are two other cases, I think one in the Second Circuit and one in the Ninth Circuit, in which we asked that the case, this peculiar case, the Ballwood case, be held in abeyance and not to send the mandate down until such time that the Supreme Court of the United States had passed on these other two cases.

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They granted the rule, they granted the order, and after the Supreme Court had handed down the decision we argued the case, and Judge Thompson read an opinion, and he followed the other two cases, both in the Second and Ninth Circuit, reversing the other—reversing their former opinion, and set forth in that case—you have it there—that these two cases had not been called to their attention when the case was argued before.

Mr. Thiess: Just let the record show that the Kelly Springfield Tire Company versus United States is
2921 reported in 81 Fed. 2nd, 533, and the Ballwood Company versus Commissioner of Internal Revenue in 84 Fed. 2nd 733.

By Mr. Thiess:

Q. Now, referring to the case of Hill versus United States ex rel. Weiner, reported in 84 Fed. 2nd, 27, were you in that case in the District Court as well as the Court of Appeals? A. I was. I presented a petition for habeas corpus up in Scranton, in that District.

Q. Referring to the case of Paramount Pictures, Inc., versus United Motion Picture Theatre Owners, et cetera, Inc., reported in 92 Fed. 2nd, 714, were you of counsel in the
2922 District Court and Court of Appeals in that case, Mr. Kaufman? A. I was, with William A. Schnader.

By Mr. Harris:

Q. Is that the case that Judge Thacher got you into? A. Judge Thacher's partner.

Q. Yes, Mr. Weisl? A. Mr. Weisl.

By the Master:

Q. What was the name of that case? A. Paramount Pictures.

Mr. Thiess: Paramount Pictures, Paramount Pictures versus United Motion Picture Theatre Owners.

By Mr. Harris:

Q. The reason I asked is, Judge Thacher's firm are general counsel for Paramount Pictures. A. That is right. That was in the Eastern District, here in Philadelphia.

By Mr. Thiess:

Q. Now, referring to the case of Metropolitan Edison Company versus Federal Power Commission, 94 Fed. 2nd, 2924
943, were you in that case in the District Court and the Court of Appeals? A. I was there with numerous lawyers, including Mr. Saul. The case originally started up in the Middle District of Pennsylvania.

Q. And referring to the case of American Safety Table Company versus Singer Sewing Machine Company, 95 Fed. 2nd, 543, were you in that case? A. Yes.

Q. In the District Court and the Court of Appeals? A. The case came over to me, and I—it was a very complicated patent case, and I sent it over to Judge Haight. He was so very busy, after we took an appeal, he finally suggested that we take Darby in the case, so all three of us were in the case 2925
when we went to the Circuit Court of Appeals.

By Mr. Harris:

Q. The redoubtable Captain Darby? A. I beg your pardon? Samuel Darby.

Q. Oh. A. Darby and Darby.

By Mr. Thiess:

Q. Now, referring to the case of Union Club of Pittsburgh versus Heiner, Collector of Internal Revenue, reported in 99 Fed. 2nd, 259, were you in that case? A. Yes.

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Q. In the District Court and Court of Appeals? A. No, I was with Mr. Ruslander in the Court of Appeals.

Q. Referring to the case of Edison Light and Power Company versus Driscoll, Public Utility Commission, 25 Fed. Supplement 192, were you in that case in the lower court—— A. Yes, sir.

Q. —the District Court and the Court of Appeals? A. I was the counsel, I was the only counsel in the Middle District of Pennsylvania for the Associated Gas and Electric System. It originated there. The case was there for a while. It came down here. Mr. Saul, I think, took part in the argu-
2927 ment, and a man by the name of Miles, from some other section, I think from Baltimore, was interested in that case, numerous lawyers in the case. It originated up in our section.

Q. Now, the case of Newman versus Ambassador Apartments, Inc., 101 Fed. 2nd, 307, were you in that case in the District Court and in the Court of Appeals? A. Well, there were two young boys, they had just graduated at Harvard, they knew my brother, and they had been allowed a thousand dollar fee, and they thought they were entitled to more fees than they received, and so they went over there, and I happened to be there, and they wanted him to argue the case.

He says, "You know, I don't argue anything, I am not
2928 feeling well, but perhaps my brother will argue the case for you."

I took the case, and I says, "If you will prepare the case I will be glad to argue, if it is simply a question of fees," so they prepared the case and I got up and argued part of the case, and they argued most of their own case. I never got a fee in it, I just did it as a—as mere friendship, friendly act, that was all.

Q. Well, now, there is one other case, Mr. Kaufman, it is Kaufman versus United States, that is reported in 102 Fed. 2nd, 368. A. That is not a correct title to that case, the

correct title of that case is—there are two cases, if I recall correctly, one is myself and my receiver, in one branch, and my co-receiver, in one branch of the case, we asked for eighteen or twenty thousand dollars, and the court, Judge Nields, said that in view of the fact that the amount of money involved is so small, that is, the amount of money on hand is so small, that he thought that the sum of four thousand dollars would be enough to pay for our fees; or something of that sort, and we took an appeal.

The same thing applied to Judge Morris, our counsel, and he asked for twenty thousand, they allowed four thousand, so he took an appeal and we took an appeal, and I didn't 2930
argue that case,—didn't do us any good, anyhow, because we lost out, but I think Judge Morris' associate, a young man in his office, argued the case there. I didn't argue the case. I think I got up and said something there during the trial of the case.

Mr. Thiess: Have you got the book there, to see how it is entitled,——

Mr. Harris: Yes.

Mr. Thiess: —how the case is entitled?

The Witness: I think they are both entitled, both receivers, but the facts are as I stated to you, that
Judge Morris claimed twenty thousand dollars and 2931
we claimed four thousand dollars each, as receiver and co-receiver. He was our counsel. Both sides took an appeal.

Mr. Harris: The suits are entitled Kaufman et al. versus United States et al., and same versus United States, Circuit Court of Appeals for the Third Circuit. Judge Davis wrote the opinion. The appeal was by Morgan S. Kaufman and another, as receivers from decrees allowing fees to the receivers and their counsel.

The Witness: That is right.

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Mr. Harris: Judge Morris acted for the appellants, and the decrees of the lower court were affirmed.

(Discussion off the record.)

The Witness: There was a question between taxes. I don't even recall—who were the judges that sat in that case?

Mr. Harris: Judge Davis.

The Witness: Anyone else? There were three judges. Well, I don't recall who the bench were.

2933 The Master: Davis, Maris and Thompson.

Mr. Harris: Yes, Davis, Maris and Thompson.

By Mr. Thiess:

Q. Mr. Kaufman, you have previously testified that you knew William Fox. During the Tri-Ergon case did you meet Mr. Fox frequently and become very well acquainted with him? A. Did I meet Mr. Fox? Of course, I knew Mr. Fox.

Q. Well, during the Tri-Ergon case did you become quite intimate with him? A. Yes, I knew him very well.

Q. And were you retained by the Fox interests to dispose of certain patents after the termination of the Tri-
2934 Ergon litigation?

Mr. Harris: You mean William Fox,——

A. Yes.

Mr. Harris: —not the Twentieth-Century Fox Film Company?

By Mr. Thiess:

Q. Did you know Robert E. Steedle, who was the Referee in Bankruptcy in Atlantic City, New Jersey? A. Yes, I knew Mr. Steedle.

Q. When did you first meet him? A. I first met Steedle in, I think in 1934.

Q. Do you remember the occurrence when you met him in 1934? A. It is all in the record there, I can't—it has all been hashed over there. I met him in 1934 on the boardwalk, the first time, I was introduced to him.

Q. You say that is in the record? A. All in the record, the whole thing, about Steedle and everybody.

Mr. Harris: Well, just before you start, Your Honor, I assume now that Mr. Thiess is about to embark in an effort to prove that Mr. Fox bribed 2936
Judge Davis, partly by paying him money directly and partly by paying him money through Mr. Kaufman. Those occurrences as alleged by the Government in the criminal prosecution occurred years after the Universal-Root case was started, and at least one or two years after the Root case was terminated. There is no connection whatever between them and Universal so far as Universal Oil Products Company is concerned, and I object to the introduction of any of this testimony as being not binding in any wise on Universal, even if this were an appropriate proceeding, and, of course, I have reserved all jurisdictional objections heretofore, and merely reiterate 2937
them for the sake of the record, for fear someone might claim that I had forgotten about them, but I think that any proof that there was any wrongdoing between Mr. Fox and Judge Davis, or Mr. Fox, Mr. Kaufman and Judge Davis at a time subsequent to the termination of the Root case is wholly irrelevant and immaterial, and not binding on Universal Oil Products Company.

Even if it had occurred prior to the time the Root case was decided or during the pendency of the trial or appeal, it would still be irrelevant and immaterial,

under the maxim res inter alios acta, because, as we pointed out previously to Your Honor——

The Master: Under the exception.

Mr. Harris: Yes, under the exception,—in none of those cases is evidence of other misdeeds or propensity toward fraud or crime permissible except against the person who participated in the several alleged crimes of frauds or other misdeeds. The cases are without exception to that effect. And one of the cases which we cited to Your Honor, as I recall, was a Pennsylvania Supreme Court decision, if I am not 2939 mistaken, where that very point was made. One of the ingredients of the application of this rule was that there should be what we call a common denominator, that is, the person sought, the person sought to be prosecuted or held liable in one suit, if he has participated with others in other transactions you may offer evidence of that other misdeed. I know Your Honor has already passed upon this, but I wanted to make it clear of record that we object to the introduction of the testimony in so far as Universal is concerned.

The Master: Well, I think I have already held that in my opinion the evidence is relevant for the 2940 purpose of bearing on the bona fides of the so-called Stokley transaction, which has already been outlined in the testimony. The objection is overruled.

Mr. Harris: Your Honor does not feel bound by the observation or the charge of the Judge in the criminal trial to the jury, that the Stokley transaction was a legitimate business transaction and that it was only permitted for the purpose of showing association of Mr. Kaufman and Judge Davis?

The Master: I don't think I would feel bound by that. As I recall it, the evidence, so far as it related

to the Root case, certainly was not received by the Court at all, and there may be other evidence here that he did not have before him. I would feel that I would have to pass on it ultimately myself.

Mr. Harris: All right, sir. Now, I may be understood as having a continuing objection, without interrupting the course of the hearing.

The Master: That is understood.

Mr. Harris: All right, sir.

By Mr. Thiess: 2942

Q. Do you remember meeting Mr. Steedle in his office in the spring of 1936?

Mr. Harris: Excuse me, Mr. Thiess, just one moment more. I hate to be technical, but in New York we no longer have to note exceptions; is that also the rule over here?

The Master: Well, so far as this case is concerned I think you may assume that you don't need to.

Mr. Harris: If not, will Your Honor grant me an exception in every case, from the beginning to the end of this case, where I have noted an objection and been overruled? 2943

The Master: Yes, it is understood that your rights are preserved in all cases in which you have made objections.

Mr. Harris: Thank you, sir.

By Mr. Thiess:

Q. Mr. Kaufman, do you remember meeting Mr. Steedle in his office in the spring of 1936? A. I do.

Q. And was this meeting, do you remember, on May 2nd, 1936, on a Saturday? A. It may have been.

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Q. Is it a fact that at that time Judge Buffington, your brother, David, and you were in Atlantic City, stopping at the Traymore? A. That is correct.

Q. What was it that was said at this first meeting with Mr. Steedle in—maybe I am wrong on that first meeting, but this meeting with Steedle on Saturday, May 2nd, 1936? What was the substance of the conversation? A. That I had with him?

Q. Yes. A. I went in to borrow a book. Is that the meeting you have reference to?

Q. Yes, that is the meeting I have reference to. A. I
2945 went in to borrow some authority on bankruptcy, I think it was Remington, or Collier, I forget which, we had a discussion there, naturally, as two referees would talk. I borrowed the book, asked him if I could take it home with me, and he said I could, and I went back to the hotel.

Q. Well, am I right, Mr. Kaufman, that you stated, when I first asked you whether you met Mr. Steedle, your answer was that you had met him in 1934, prior to this meeting—A. Yes.

Q. —in 1936? A. The record shows that.

Q. And you met him on the boardwalk, you say? A. Yes, I was introduced to him.

2946 Q. And when was that in 1934? A. I couldn't tell you the date.

Q. Who introduced you to Mr. Steedle? A. Some lawyer from Passaic, New Jersey, I can't think of his name—the record will show it—at this time. I can't recall, now, I have mentioned it at the time, it just left me for the moment.

Q. Did you have any conversation of any length with Mr. Steedle when you met him? A. At that time?

Q. Yes. A. Oh, yes, we talked a great deal.

Q. In 19—— A. The methods——in '34.—as to the conduct of their office, and how far they have jurisdiction, and as to whether they have the appointments of receivers dur-

ing the absence—general conversation amongst referees as to their offices.

Q. And did you meet him again between that time in 1934 and this meeting in 1936 that I talked to you about? A. No, I don't recall, I remember when I testified at the first trial my mind was very clear on those things, I think you will find an entire record of my meeting him, in all particulars, in the record.

Q. Well, at the time that you met Mr. Steedle in May of 1936 did you invite him to lunch with you, with David Kaufman and Judge Buffington for the next day? A. I may have, I can't recall now. 2948

Q. Isn't it a fact that the next day, Sunday, Mr. Steedle did meet you, your brother, David, and Judge Buffington at the Traymore Hotel in Atlantic City? A. He may have.

Q. And at that time isn't it a fact that you and your brother, David, mentioned to Mr. Steedle your desire to secure a small house for your sister in Atlantic City? A. My sister-in-law.

Q. Your sister-in-law? A. That is right.

Q. At that time did Judge Buffington in your presence invite Steedle to come to Philadelphia and have lunch with him and to meet the other judges of the Court of Appeals? Do you remember that? A. I don't recall that. 2949

Q. You did not suggest to Judge Buffington he should extend such an invitation? A. I did not.

Q. Did you call upon Referee Steedle in the company of Judge Davis at some later time? A. No, I came there the following day to return the book, and the Judge was in Atlantic City—

By Mr. Harris:

Q. Judge who? A. Judge Davis and he accompanied me, I had my car there, and I drove down, and I gave—returned the book to him.

As he walked outside I said to him, "Would you like to meet Judge Davis, of the Circuit Court of Appeals?"

He says, "I will be very glad to."

I says—or, I said, "This is Judge Davis sitting in the car, Judge of the Circuit Court of Appeals."

He says, "I will be very glad to," and they talked about their sons, and one son went to some school and the other son went to some other school.

By Mr. Thiess:

2951 Q. Now, are you certain that that was the time, as of May 1st, 2nd and 3rd, or wasn't that a subsequent date? A. That was that time, I am quite sure.

Q. You are quite sure it wasn't as of May 29, 1936? A. I didn't see Steedle on May 29, 1936. That is the last time I ever saw the man.

By Mr. Harris:

Q. When? A. May 2nd.

By Mr. Thiess:

Q. Was Davis in town at the time that your brother, 2952 David, and Judge Buffington and you were there? A. No, I think that is a different date, I think that was before, that was a week before that.

Q. Well, that is what I was— A. You got the whole thing mixed, or I have got the thing—or you have got the thing mixed up. I don't remember whether it was in April —the last time I ever saw him was the time I delivered the book, with—or, perhaps not—when he came up to, either to have lunch or to see Judge Buffington, or before that, I can't recall the dates, because it didn't——

Q. Well, then, as far as your present recollection is concerned, the time that you called on Mr. Steedle with Judge

Davis might have been some time subsequent to the time that you were there with your brother, David, and Judge Buffington?, A. No, I think it was before, I am quite sure it was before. 2953

Q. You are certain it was before and not later? A. I am quite sure it was before.

Q. Now, at the time that you were there, you had this meeting with Referee Steedle and Judge Davis was there, did you advise Steedle that you had heard that the Fox bankruptcy had been filed and that you felt sure that Steedle would get this Fox case? A. Why, I couldn't have done that because the Fox case wasn't filed, the petition wasn't filed, the record showed through the hearing on May 29, 1936, I never saw that man at all after May 2nd, on May 2nd or 3rd, the Sunday, is the last time I ever saw Steedle. 2954

Q. Then as far as you remember, you had no conversation with him at all respecting the Fox bankruptcy? A. That is correct.

Q. Now, prior to your conversation with Mr. Steedle in the presence of Judge Davis had you and Davis seen Fox in Atlantic City? A. No, sir, I never met Fox and Davis in my life together.

Q. Did you ever see Referee Steedle after you visited with him in the company of Judge Davis? A. No; I was only in his office that once, and I secured the book. 2955

Q. Then you have no recollection whatsoever about being in Referee Steedle's office in July and discussing with him the Fox bankruptcy matter? A. None whatsoever and that testimony, I might say to Your Honor, in order to clear it up, that, when this man Steedle died, they found six or eight pages of typewritten paper, they tried to offer that in evidence in the criminal court—this man was present, he knows about him,——

By Mr. Harris:

Q. Which man? A. This gentleman right here (indicating).

Q. Mr. Thiess.

Mr. Thiess: I wasn't present.

The Witness: I think he was present every minute of the cases both in the first and second trial, at least, every time I turned around in my seat there was the man leaning over to listen to what we were discussing.

2957 However, that is beside the question.

So these—after he died they found these six pieces of typewritten sheets of paper, and they tried to offer them in evidence both in the first trial and in the second trial but the Court refused to even listen to it, because it was an ex-parte affidavit.

The Masters who heard the case, after spending three or four pages, said, "We are satisfied that this was—that this testimony was incompetent," and they threw it out. Now, why they did the reasons are all set forth in a copy of their opinion. One of the Masters, I think Mr. Clark, wouldn't even discuss it at all. They all held it was incompetent testimony.

2958 The Master: Well, we haven't come to that yet, Mr. Kaufman.

The Witness: I just thought that I would relate that angle to you, so that you can see what this man is driving at.

By Mr. Thiess:

Q. Did you in the month of July, 1936, have a meeting with William Fox at which time you requested him to loan the sum of fifteen thousand dollars to Judge Davis? A. The jury found that—they couldn't agree upon that, could they?

Q. I am just asking you. You can say "no" or "yes" to these questions. A. What was the question?

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The Master: Read the question, please, Mr. Rodebaugh.

(The question was repeated by the reporter as follows:

"Q. Did you in the month of July, 1936, have a meeting with William Fox at which time you requested him to loan the sum of fifteen thousand dollars to Judge Davis?")

A. I never saw William Fox in July of '36, I never requested the amount of money, and Judge Davis never requested to get 2960
to borrow fifteen thousand dollars, and I so testified on two—three different occasions, and that Mr. Fox made this statement for the purpose of protecting himself and trying to get benefits from the Government, and I will show you before we get through that this man is the most deliberate liar that ever walked in shoe leather.

The Master: Well, you are anticipating a little, again, Mr. Kaufman.

The Witness: I hope to prove that to your satisfaction, Your Honor.

The Master: Just answer.

By Mr. Thiess: 2961

Q. Did you and your brother, David, attend the wedding of Judge Davis's daughter, and did Judge Buffington go with you? A. I don't think that—we attended the wedding, but I think I came over from New York, but who Judge Buffington came with I don't recall. There were two or three hundred people there. I saw Judge Buffington there.

Q. In the fall of that year did Fox meet Judge Davis in your apartment in the Bellevue-Stratford Hotel in Philadelphia? Now, can't you just answer these "yes" or "no"? A. No.

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Mr. Harris: Is this still in 1936?

Mr. Thiess: Yes.

By Mr. Thiess:

Q. Did you meet William Fox on the evening of March 16, 1941 at the apartment of Murry Becker, in New York? A. Yes, sir, I will give you the circumstances of that if you like.

Q. All right. A. Do you want me to give you the circumstances of the other case?

2963 Q. What was said—— A. Now, let me go back to 1936, now, in 1906 ——

Mr. Harris: 1936.

A. (Continued) July, 1936, sir, was it July you said he met me?

Mr. Thiess: Yes.

The Witness: What was the question again, in '36?

Mr. Harris: Bellevue-Stratford.

Mr. Thiess: At the Bellevue-Stratford, the fall of the year, whether you met Judge Davis——

The Witness: He says that he came to Philadel-
2964 phia in the fall of '36 and he called me on the telephone at my brother's apartment, and he took a chance, he found me in, he came up ——

By Mr. Harris:

Q. That is, William Fox? A. William Fox—took a chance and he found me in, that was the first time he had seen me since he had told of the alleged lo n that he made to me to give to Judge Davis, and he says while he was talking there with me Judge Davis walked in, at the same time—great coincidence this is his testimony—I don't live there, he happened to find me in, and while I was there Judge Davis

walked in, and Judge Davis, he says, thanked him for the loan at that time. You see, they had to complete the circle, not only to lend the money, but that he got the money—weren't satisfied to have me get the money, but that I delivered the money, that was their—that was the Government's thought, in this way, and they couldn't complete it unless they completed the chain and so Fox had to complete the chain by telling about an incident that happened, the coincidence, both as to him being there and Judge Davis being there, all by coincidence. Now, in 1941 ——

By Mr. Thiess: 2966

Q. This Murry Becker incident—— A. —I was called down to Murry Becker's house, I got in from Scranton in 1941 on a Sunday, I got in about—that train gets in about eight o'clock,——

By the Master:

Q. When was this? A. In 1941—and while I was there I got a telephone call from Murry Becker——

Q. Who is Murry Becker? A. Murry Becker was the counsel for William Fox. I represented Fox from 1934 until 35 until the close of the Tri-Ergon case. It is the only case I ever represented him in in my life, had nothing to do with this bankruptcy, no one testified of any way, shape, 2967 manner or form that I had anything to do with this case—in 1941, on that evening, he called me up and asked me if I could come over, he wasn't feeling well, or words to that effect, and I dressed and went over to see him, and there I found Mr. Fox.

By Mr. Thiess:

Q. Now, do you want to go ahead and say what was said at this meeting, and so on? A. What was said at the meeting?

Q. Yes, when you got there—— A. Well, yes.

Q. —and found Mr. Fox there. A. Why, they wanted to know whether—he said, "We just got—flew back from Washington, we just came back," and they wanted to know whether I would call up Judge Davis for him; they wanted to discuss a matter, I don't know what it was, and I said, "There is the telephone, gentlemen, why don't you call him?"

"Well," he said, "we would rather not."

Murry Becker and I were very good friends, and I would —wouldn't have gone to his house at that hour of the night if we weren't, and when he asked me to call up William Fox—or, I mean, Judge Davis, I says, "Now, there is the
2969 telephone, call him yourself."

They said, "No, we would rather not." They said, "Well, when you see him I wish you would tell him that—to call me"—Becker said this, so I said, "All right," I says, "is that all you want to talk to me about?"

He said, "Yes."

I don't know whether we took a drink that night or not, and I walked out of the room, that was all that took place there that night.

Q. Well then, you say that Mr. Becker suggested that you call Mr. Fox?

Mr. Harris: No,——

2970

By Mr. Thiess:

Q. Judge Davis, I meant to say. A. That is right, that is right.

Q. Isn't it a fact that you informed Mr. Fox that Judge Davis was anxious to see him? A. I did not. That is where I contradicted William Fox. They didn't call Mr. Becker, they were afraid to call Becker.

By the Master:

Q. You mean Fox?

Mr. Harris: No, Becker.

A. They were afraid to call Becker, the Government. Here was Fox's counsel. I made the statement on three different occasions, and if it weren't true they would have had Becker there, but they didn't have him. That is the best answer, that I was telling the truth, and Fox was a deliberate liar, right there.

By Mr. Thiess:

Q. Now, is it a fact that the next day you had a conversation with Judge Davis and told him that Mr. Becker, who was Mr. Fox's attorney, wanted to see him? A. I didn't 2972
mention Mr. Fox's attorney. I said that Mr. Becker of Hughes——

Mr. Harris: No,——

A. (Continued) No, I mean of Hughes—pardon me—Reass, Becker,—whatever the name was—Hirsh, Newman, Reass and Becker.

Mr. Thiess: That is it.

The Witness: That Mr. Becker wanted to see him.

By the Master:

Q. Now, I didn't quite get that. Where did you see 2973
Judge Davis to tell him that? A. Davis called me on the phone and said to me, "I understand that they are moving the investigation from—from New York to Philadelphia." This was on the 17th of March, on Saint Patrick's day.

Q. What year? A. 1941, it was just before the indictment was found.

I says, "I understand that is correct, Judge." I either read it in the paper or heard about it. I said, "By the way," I said, "Mr. Becker, of the firm of Hirsh, Newman, Reass and Becker, is very anxious to see you, or very anxious to have you call him on the phone."

That was all that was to it. He thanked me. That was the last I saw of him. But all that statement about Fox, I deliberately told them that this man Fox was deliberately lying, and with all of that, I said Mr. Becker was there on every occasion, and they never saw fit to call Becker to contradict me, if I wasn't telling the truth.

By Mr. Thiess:

Q. It is a fact, is it not, that you talked with Judge Davis a number of times in 1939, '40 and '41 with reference to the progress of this investigation which was being conducted by the Department of Justice? A. I talked to him on several occasions.

Q. Prior to March 17, 1941 were you acquainted with a man by the name of Herman Goldberg? A. Yes, I knew a man by the name of Goldberg, that is, everybody——

Q. Herman Goldberg? A. Herman Goldberg—everybody knew him in Wilkes-Barre. He was the—I didn't know him very well, I knew him, I never had a matter before him, but everybody knew Herman Goldberg, he was chairman of the Public—I think they called it the Public Service Commission, before they changed it to the Utility Commission.

By the Master:

Q. Public Service Commission. A. He was a member of that commission, I think Governor Pinchot appointed him, but right there, let me tell you, we happened to check up on the directory of Herman Goldbergs in Brooklyn and in New York, and we found about forty of them, or more.

Mr. Thiess: That is all for us, Your Honor.

The Witness: May I have a right to talk to one of these gentlemen before they cross-examine—before you cross-examine me?

The Master: Do you wish to confer with him?

Mr. Harris: Well, I would be very glad to talk to Mr. Kaufman if he wants to talk to me, if there are some things he wants brought out.

The Witness: I want to tell him some things that I think ought to be brought out.

Mr. Harris: So far as these Fox transactions are concerned——

The Witness: I don't care anything about that.

Mr. Harris: ——we are certainly in the position of an innocent bystander, in the state of the record, but if Mr. Kaufman wants to talk to me a minute, if Your 2978
Honor will grant five minutes recess I will be glad to bring out anything that may be helpful.

The Witness: The only thing I want is to bring out something.

The Master: I don't think there is any objection to conferring, if he wishes. We will take a five-minute recess.

(Recess at 3.20 o'clock P. M.)

MORGAN S. KAUFMAN, resumed.

Cross Examination: 2979

Mr. Harris: May it please the Court, at Mr. Kaufman's request and with the permission of the Master I have conferred with Mr. Kaufman with respect to certain matters which he desires to have brought out on the record in this case. These are his own suggestions, and I would like, if after we have read the record we think we would like to cross-examine Mr. Kaufman, to ask for indulgence to recall him at some later, convenient time, but I would like in that respect to look through the record, it has been rather complicated, and decide whether or not we need to ask him any questions.

I will now proceed with the matters which Mr. Kaufman himself desired brought out.

By Mr. Harris:

Q. Mr. Kaufman, how long have you been practicing before the Circuit Court of Appeals in the Third Circuit, approximately? A. Approximately thirty years.

Q. And did you have cases there in which you were counsel or which you argued, or both, before Judge Davis was on that bench? A. Many cases.

2981 Q. Do you recall approximately or can you furnish us a list of cases that you had during that period? A. I will be very glad to. I think—you want the number; or——

Q. If you can just send me a list of them I can call them to the attention of the Court, because they will be recorded—— A. Yes.

Q. —in the Federal Reporter or the Federal Supplement. A. Ever since 1910, all the way down.

Q. And let us know the number of cases in which Judge Davis sat, also. A. Yes, when Judge Gray sat on the bench. I think Your Honor will remember Judge Gray.

The Master: Very well.

2982 *By Mr. Harris:*

Q. And offhand, without our waiting for this list, can you tell us whether or not, aside from the two occasions of Kaufman against the United States, referred to today, where Judge Davis wrote the opinion of the Court, decided against you, there were other cases in the Circuit Court of Appeals in which Judge Davis sat, where the Court, he either writing the opinion or concurring, decided against you? A. Yes, well, there is the Newman case, that I think he decided, I don't know whether he decided——

Q. Was he on the bench? A. He was on the bench—that year——

Q. Mr. Thiess? A. The gentleman mentioned, Mr. Thiess mentioned, and there was a case of a steel company that my firm was interested in, and we lost that case.

By Mr. Thiess:

What firm is that? A. Kaufman, Mattes and Levy, I think; and then there was a case against some stove company that we lost.

2984

By Mr. Harris:

Q. Well, at any rate, you will get up a list of those and send them, and we can see—— A. And a great many we won, before that time, when he wasn't on the bench.

Q. And we can just call the Court's attention to the citations. They will be reported. A. I will be glad to check them up.

Q. They can be examined by the court without further testimony. A. I will give the case number and the page.

By the Master:

Q. Will you include any cases that were not reported. 2985

Mr. Harris: Yes, that is right.

By the Master:

Q. When did Judge Davis come on the bench, do you remember? A. I thought he testified—well, you would know.

Mr. O'Mara: He succeeded Judge Haight in 1920.

Mr. Harris: 1920?

Mr. O'Mara: Yes.

The Master: I thought it was before that.

2986 *Morgan S. Kaufman—For Amici Curiae—Cross*

Mr. O'Mara: No, Judge Haight resigned from the Circuit Court of Appeals in June of 1929, and Judge Davis was a District Judge up to that time and succeeded Judge Haight on the Circuit Court.

By Mr. Harris:

Q. Now, Mr. Kaufman, aside from these cases that have been mentioned and the matters which you have mentioned, I think you have mentioned being one of the receivers for S. W. Straus and Company,—— A. Yes.

2987 Q. —that was a large organization, was it not? A. Very large.

Q. Were you a trustee in equity, or in bankruptcy? A. Receiver in equity.

Q. Receiver in equity. What were the total claims in that case, do you recall, approximately? A. Many millions.

Q. Several hundred million, were there? A. I think so.

Q. And you were appointed by the Federal Court in New York? A. No, in Delaware, Judge Nields.

Q. Judge Nields appointed you, and were you an ancillary receiver in New York? A. I was.

Q. And do you recall who the Judge was who appointed you there? A. Well, wait a minute—no, we had ancillary
2988 receivers appointed in every other place but New York. We were not appointed ancillary receivers. We had ancillary receivers appointed in Maryland, Massachusetts, and some other States.

Q. Well, how did you function in New York, under a Delaware order? A. Under a Delaware order, we simply had our offices there.

Q. I see, all right. And you have also testified, have you not, that among other clients you have represented the Associated Gas and Electric Company? A. Yes, and all its subsidiaries.

Q. In the Middle District of Pennsylvania? A. Middle District of Pennsylvania.

Q. And that you have represented, at least in one important case, the Paramount Pictures, Incorporated? A. I have.

Q. And in that case you were retained by Mr. Weisl, who was Judge Thacher's partner? A. That is right.

Q. You also testified that you represented in important litigation the Kelly Springfield Tire Company? A. Now, just a minute, Mr. Weisl recommended me to the legal firm, of New York lawyers.

Q. That is right. A. And then they came in.

Q. Was that the firm of Phillips and Nizer? A. I think that is right.

2990

Q. They are the regular trial counsel? A. That is right.

Q. But Judge Thacher's firm are general counsel? A. That is the general counsels.

Q. You also testified, did you not, that you had represented the Kelly Springfield Tire Company? A. I have represented them for a great many years.

Q. And—— A. Long before this case came in in the Circuit Court of Appeals, we had a lot of business with them.

Q. That was not the only matter you had with them? A. No.

Q. Did you represent—— A. In fact, I represented the estate, their general counsel, and that was Henry L. Moses, of the firm of Moses and Singer—he is chairman of the board of the Public National Bank,——

2991

Q. That is true. A. —his father died in Scranton and I settled the estate there.

Q. And did you represent the United Mine Workers of America? A. I did, in some matters. I think Mr. White will remember the case, it was a small case, I think amounted to forty-five dollars, but it went to the Supreme Court.

By the Master:

Q. The one Mr. Morris argued? A. Roland M[illegible] argued the case. I think he got a fee of five thousand dollars, and

2992 *Morgan S. Kaufman—For Amici Curiae—Cross*

I got a fee of either five hundred or a thousand. The case only involved, I think—if was the principle involved; the amount involved was only forty-five dollars.

By Mr. Harris:

Q. That was a test case? A. I guess you will recall the case, when all the judges, most of them, were candidates for governor.

The Master: I also recall the room was full of labor leaders.

2993 The Witness: That is right.

Mr. Behrens: They were watching the candidates.

By Mr. Harris:

Q. The late Samuel Gompers, who was president of the American Federation of Labor, was a client of yours? A. I was his personal counsel for two years.

Q. And aside from those, have you had numerous other clients—— A. Oh,——

Q. —of one sort or another? A. Oh, yes.

Q. Not only local, but outside of the State, and elsewhere? A. Many of them.

2994 Q. And you have had occasion to be associated with many other lawyers, both in Pennsylvania and in other States? A. All over the country.

Q. I have had called to my attention the case of Penman against Jones, reported in 256 Pennsylvania State,——

Mr. Thiess: That is Penman?

Mr. Harris: Penman.

Mr. Thiess: Versus Jones?

By Mr. Harris:

Q. at page 416,——

Mr. Thiess: What is the citation? I didn't get it.

Mr. Harris: 256 Pennsylvania State, 116.

By Mr. Harris:

Q. In that case you appear to have been counsel for the appellant? A. That is correct.

Q. And Mr. John P. Kelly of O'Brien and Kelly,— A. Judge Kelly.

Q. —was a well-known lawyer? A. Very well, one of the very able lawyers from our section of the State, Judge Kelly, of Scranton. 2996

The Master: Scranton, yes.

By Mr. Harris:

Q. I notice associated with them was Mr. John G. Johnson? A. He argued the case.

Q. He argued the case for the appellee, and also associated was Mr. Phillip B. Mattes? A. He later became my partner.

Q. Also Mr. Alexander Simpson, Jr.? A. He argued the case for the Scranton Coal Company.

Q. Was he a prominent lawyer? A. Very. He became Justice of the Supreme Court of our State. 2997

Q. I observe that you lost the case— A. Well, I tell you—

Q. —in the Supreme Court of the State by a five to four decision? A. Yes.

Q. The dissenting opinion having been written by Mr. Justice Moschzisker? A. Von Moschzisker.

Q. Who is now the Chief Justice, or who until recently was the Chief Justice?

The Master: He was until some years ago. He is dead now, since died.

By Mr. Harris:

Q. And the dissent was concurred in by Judge Stewart? A. Yes, there were two dissents and five affirmances. There were only seven judges.

The Master: It couldn't have been a five to four decision.

The Witness: No, two, five to two.

Mr. Harris: I was thinking of the Supreme Court.

The Witness: We first argued that case, we took an extra hour in arguing the case. When we got
2999 through, in the spring of the year, they sent for us in the fall of the year to re-argue the case. It was a very difficult case. It was known as the third estate the first time the third estate was involved.

By Mr. Harris:

Q. It involved subsurface rights? A. Yes, of a third person, not owning the soil or the mineral underneath, the right of support. It was known as the third estate, in Pennsylvania.

Q. Is that regarded as a leading case in Pennsylvania? A. Yes, that part of the case didn't, but others went to the
3000 Supreme Court of the United States.

Q. Have you been associated with other important cases in the Pennsylvania State courts? A. Oh, yes, a great many.

Q. And have you had cases in the United States Supreme Court? A. Yes.

Q. You had the Tri-Ergon case. A. Tri-Ergon case there, the famous Tri-Ergon case.

Q. And you have had cases in both trial courts and appellate courts of other States? A. I have.

Q. Now, Mr. Kaufman, you are a United States Referee in Bankruptcy for the Middle District of Pennsylvania? A. Yes, for two counties of that district, Lackawanna, which

Scranton is in, and as far as Stroudsburg, on the other end of it, Lackawanna and Monroe Counties.

By the Master:

Q. You are now? A. I have been, no, I was there for twenty-three years.

By Mr Harris:

Q. When were you appointed, sir? A. I was appointed in 1913.

Q. And you remained in office until when? A. 1936. 3002

Q. At which time you resigned? A. I resigned, I couldn't be coming to New York and Scranton, and so I asked for—to be let of, in 1933 or '4, but they wouldn't stand for it, and so I——

Q. Now, in addition to that you have held other positions of prominence. Have you been a trustee of a hospital? A. Yes, I was trustee of the Farview State Hospital, which is one of the largest criminal insane in Pennsylvania, appointed——

Q. By whom were you appointed? A. By Governor Pinchot and Governor Fisher, both. I was there for two terms.

Q. Did you run for delegate to the Republican National Convention in 1932? A. I was a National delegate, and had to run for office against a very dear friend of mine, Reese Harris, who was general counsel for the D. L. and W. Railroad, firm of Knapp, O'Malley, Hill and Harris. 3003

Q. Did you win the contest? A. I did.

Q. And you attended that convention? A. I did.

Q. As a Republican delegate? A. I did.

Q. Did you hold some position as a member of some city planning commission? A. I was planning commissioner of the City of Scranton for six years.

3004 *Morgan S. Kaufman—For Amici Curiae—Cross*

Q. Are you a member of any bar associations? A. I am, the American bar, Pennsylvania bar and our local Bar.

Q. Now, Mr. Kaufman,—— A. I might say right there that in all these thirty-five years there has never been a breath of suspicion cast upon me, until this charge was brought.

Q. Mr. Kaufman, there has been some evidence here that you knew Judge Buffington and Judge Davis well, and you, I think, volunteered that you knew a great many other judges equally well. Is that a fact? A. That is correct. I knew Judge Thompson very well, in fact, we were fishing
3005 many times together up at our place, he was our guest, and Judge Davis and Judge Buffington and Judges of the District Court were there numerous times, Federal Judges, Judges of the Supreme Court and Superior Court.

Q. Will you name what judges of the Supreme Court—— A. Well, Judge Kephart has been there, Judge—the Judge from Pittsburgh, what is his name?

By the Master:

Q. Drew. A. Drew has been there. Judge Maxey has been there many times. Let's see, I forget now who else is on that bench now.

3006

By Mr. Harris:

Q. During all of these times that you say you have been host at fishing or otherwise to judges of the State and Federal Courts, will you state to His Honor, very categorically, whether or not you ever discussed with any judge any matter in which you were interested, directly or indirectly, then pending before any such judge, or which you expected to be pending before him? A. I never discussed a matter with a judge that was pending, with a judge of a case pending before him, in my whole life.

Q. And you say that without any reservation? A. Without any reservation whatsoever. I never discuss a thing.

Q. Now, tell me categorically whether or not you ever sought to influence the decision of any judge in any case in which you had any interest, directly or indirectly, or in which any friend or acquaintance of yours had an interest. A. I never discussed or even intimated of anything, whether I was interested directly or indirectly, or tried to influence a judge one way or the other, in all my life.

Q. Did you ever lend any judges any money? A. Never.

Q. Did you ever arrange for loans to any judge of any money or anything of value? A. I never loaned a judge of any kind—well, I say I never did, I would rather withdraw that one statement. The man has been dead—but I never—— 3008

Q. You had no matter pending before him—— A. I never loaned a Federal Judge a dollar in my life.

Q. And the judge who is now dead—— A. Well, now, we won't discuss anything of that sort.

Q. You had no matter pending before him? A. No, no.

Q. That is what I mean. A. No, no, no matter pending before him.

Q. Did you ever discuss the Root case with Judge Buffington or Judge Davis before it was pending, while it was pending, or after it was pending, up to the time of this investigation? A. I never discussed the Universal-Root case, with Judge Buffington or Davis or Thompson in my life. In fact, I don't believe that anyone ever knew that I was even —that I was even retained in the case. 3009

Q. Did you ever tell any of them that you were retained in that case? A. Never.

Q. And so far as you know, did anyone else ever tell them—— A. I don't know about that, about anyone else.

Q. —that you were retained, so far as you know? A. So far as I know, no.

3010 *Morgan S. Kaufman—For Amici Curiae—Cross.*

Q. Did you lend ten thousand dollars to Mr. Stokley as any part of a reward to Judge Davis for any part that he may have had for the decision in the Root case? A. That is absurd, and I say absolutely not.

Q. Did he request you to lend this money as compensation or a reward or a bribe for what he had done? A. He had not.

Q. Did he ever discuss in connection with the loan that was made, did he ever mention the Root case? A. I never mentioned the Root case to him, and I don't—and I am sure he never mentioned the Root case to me, whether it was he,
3011 or Buffington, or Thompson, whoever sat on the bench at that time.

Q. Did you promise Judge Davis, or Judge Thompson, or Judge Buffington, or any combination of them, that they would receive any part of the fee that you were to receive from Universal Oil Products Company? A. No.

Q. Did you bribe any of them in that case? A. No.

Q. Did Mr. Halle make the payment of the fee or any part of it in the Root case to you contingent upon what you were able to get Judge Davis or Judge Buffington or Judge Thompson to do? A. No.

Q. Did Mr. Halle ever suggest to you directly or in-
3012 directly that you were retained because of your supposed influence with these or any other Federal judges? A. I never discussed that with him.

Q. Did you suggest to anyone the composition of the bench to hear the Root appeal? A. I didn't know a thing about it.

Q. Did you know what the composition of the bench would be? A. I did not.

Q. Did you inform Mr. Halle or anyone on behalf of the Universal, including Mr. Belknap, that you might be of particular service to them because of your influence with Federal judges? A. No, I did not.

Q. And—— A. And, by the way, I never made a statement of that kind to any client.

Q. Did Mr. Belknap, particularly, ask you whether you were well acquainted with the Circuit Court of Appeals Judges before whom the appeal of the Root case might come? A. He did not.

Q. Did you tell him that you were? A. I did not.

Q. Did he ask you whether or not you thought you might have influence with any of those judges? A. He didn't ask me.

Q. Did you tell him that you did or did not—— A. I did not. 3014

Q. —have such influence? A. I did not.

Q. Were you promised any part of your compensation because you might or might not have such influence or claim that you had such influence? A. No, sir.

Q. Did you tell Mr. Halle or anyone on behalf of the Universal Oil Products Com any that you intended to lend some money to Judge Davis's cousin? A. No, sir.

Q. Did you ask them to make the—allow the fee of twenty-five thousand, or thirty-five thousand, so you could lend some money? A. No, sir.

Q. Did you ever tell any person connected with Universal or on its behalf that you had made a loan to Judge Davis's cousin? A. No, sir. 3015

Q. Now, Mr. Kaufman, did you regard the ten thousand dollars that you loaned to Mr. Stokley as an ordinary, legitimate business transaction? A. I thought it was a good business transaction.

Q. And was eight per cent return—— A. Eight per cent.

Q. —on your money regarded by you as a very—— A. Well,——

Q. —attractive investment? A. Very, and, furthermore, everything I invested in at that particular time, I lost money

in, I was darned glad to get fifty cents on the dollar, to say nothing about the investments, every time you made an investment you lost money.

Q. Now, this series of questions that I have asked you, regarding fraud and alleged bribery, and so forth, do you make each and every answer that you have made to my questions categorical and without any reservation,—— A. Without any reservation.

Q. —mental or otherwise? A. Right.

Q. And you wish His Honor to understand that you did not seek to influence the Federal bench, that you did not in-
3017 fluence the Federal bench, that you did not promise to bribe or pay any of them, that you did not promise—that you did not bribe or pay any of them, that Universal did not retain you for that purpose, that you did not say that you would be useful for that purpose, that you did not tell Universal that you wanted to lend—to bribe them or lend some money to any of them, that you did not in fact do so? A. That is absolutely——

Q. So you answer every one of these in the affirmative, without any reservation,—— A. Absolutely correct.

Q. —mental or otherwise? A. I answer that affirmatively, without any reservation.

3018 Q. Oh, yes, there was one other thing that you told me about, Mr. Kaufman, and I forgot. You were in the Tri-Ergon case, were you not? A. Yes, sir.

Q. You didn't try the case? A. No.

Q. And you didn't argue it? A. No.

Q. There were patent counsel who did that? A. That is correct.

Q. And you were counsel of record and simply stood by and took care of local matters, is that right? A. That is right.

Q. Now, did you receive a retainer in that case at the time you took it? A. I did.

Q. What was the amount of the retainer? A. Ten thousand dollars.

Q. Was that received from Mr. Fox in cash? A. That was received by Mr. Fox, by check.

Q. From Mr. Fox? A. From Mr. Fox, after we filed our suit.

Q. And did you have a contingent fee interest in the outcome of that case? A. Well, I understood that he was to take good care of the lawyers.

By Mr. Thiess: 3020

Q. I have just one other question, Mr. Kaufman. Did you share your fees with your brother, David? A. Well, we had an arrangement between us way back, for many years before that, that anything we had was to go into a common fund, whatever he made, whether it was in incomes derived from any source, or law practice, it all went into a common fund, and we set it forth, every one of these items that you have mentioned here, every check was put forth in our income tax and divided fifty-fifty; and not only—not only the fees, but the incomes from stocks and bonds and real estate, incomes from all sources were equally divided—lot of times he didn't know anything about these cases, I didnt know anything about his matters, the same thing is true today, except the 3021
fact he just got married recently, and, of course, we are going to divide on the first of January; outside of that we were equal partners.

By Mr. Harris:

Q. Now, one other question. So far as you know of your own knowledge, was Judge Davis ever guilty of any impropriety by being influenced by a litigant before him, or on behalf of a litigant, other than on the merits of a case, in any other case? A. I don't know of any charges or any case in mind, until these charges were brought.

Q. Now, did you at the time the Root case was pending before the Circuit Court of Appeals have several other cases before that Court? A. Well, that—what year is that?

Q. That was 1935, during 1935. A. I may have. I may have. The record would show it.

Q. All right, we would like to look up that record. A. I will be very glad to. I think the record would show that.

Q. One other thing—I guess it wasn't very important, I have forgotten.

Mr. Thiess: Mr. Harris broke in before I had com-
3023 pleted my questions.

Mr. Harris: Oh, I am sorry.

By Mr. Thiess:

Q. For how long a period have you been dividing your income with your brother, David, in that way? A. Since 1922, I think, a period of twenty years, whatever I own belongs to him, and whatever he owns belongs to me. We drew whatever we wanted, if I went out and spent twenty-five dollars a night, he would have to share, twelve and a half, and vice versa, and all that.

(Discussion off the record.)

3024

The Witness: He went to Siam, and Bolivia, and all that, but I stood half of it, and that was all right so far as I was concerned.

By the Master:

Q. Mr. Kaufman, I would like to ask you a few questions. A. Certainly.

Q. On this occasion when you say Mr. Becker called you and asked you to call Judge Davis, didn't he tell you, or, did he tell you what he wanted you to call him about? A. He did not, he just asked me if I could come over, he wasn't

feeling well, and I said I had just gotten in from Scranton. However, I had my collar off, and I remember distinctly, my shoes off, and I put my collar, shoes and coat back on, jumped in a taxi and went up there, and to my surprise Mr. Fox was there.

Q. Well, didn't he indicate what he wanted to talk to Judge Davis about? A. He did not, he just said he wanted to see Judge Davis, Judge Davis——

Q. Then he simply asked you to call him? A. He says, "Will you call him?"

Q. What were you going to say to him? A. "Will you call him and tell him that I want to see him?" 3026

Q. Yes. A. And I said, "Well, why don't you use the phone? There is a telephone, use it yourself." The telephone was right in the room with us.

Q. Well, you have testified in this proceeding that you did practically, as I understood it, no work in the Root case, is that correct? A. Practically, all that I—the work that I did I testified to here.

Q. Yes, and I think you said that you were not a patent lawyer and that Mr. Belknap knew that? A. I don't know whether he knew that or not. He didn't ask me. I assume he knew that I wasn't a patent lawyer.

Q. Yes. Well, what did you interpret your retainer was for and the payment of the substantial fee to you, if you weren't to be of use in the case? A. Well, I don't know, except that I had a—I was called upon, I had a right to be called upon at any time, they told me not to take any other case of any kind. 3027

By Mr. Harris:

Q. For an oil company. A. I beg your pardon?

Q. For an oil company. A. For an oil company, and under the circumstances, knowing the millions of dollars that were involved in the case, and they had won the case,

and it was upon that basis that I decided on a fee of ten thousand dollars. I didn't know—I must have had in mind the Fox case, the Tri-Ergon case at that time, because I didn't do much work in that case and I got a retainer of ten thousand a year—ten thousand for that, with an additional fee.

By the Master:

Q. Did you understand your retainer was so that you could not be retained by any other oil company? A. Yes,
3029 Your Honor.

Q. That was really the reason you were retained? A. That is absolutely correct.

Q. Well, what could you have done for any other oil company? A. I couldn't tell you.

Q. I mean, you had no knowledge of the patent law at all? A. I didn't know what they wanted me—they came in and retained me, they were there for—as I say, I discussed the matter, they all knew I was in the case, Judge Haight knew I was in the case, Mr. Halle knew I was in the case, Mr. Behrens knew I was in the case, everybody connected with the case knew I was in the case, and the only question is the question as to the fees, and I don't think I would
3030 have asked for such a large fee if it hadn't been for the fact of the great amount of money that was involved in the case, and the success.

Q. I thought you—I may be wrong, but I have a recollection that in one of your earlier proceedings you intimated that Mr. Belknap had said you would have ten thousand dollars a year. Was I wrong about that? A. I didn't say that, I didn't say that.

Q. I may be wrong about it. A. No, I don't think——

Mr. Harris: That was Halle's recollection of what Belknap had told him.

The Master: That is right.

The Witness: I don't think he said anything about it. He said to me, when we discussed retainer, he said, "I think you will fare very much better if you let the matter rest until the case is disposed of."

By the Master:

Q. Your recollection is he didn't mention any amount? A. I don't believe he did. That is my recollection.

Q. Did Mr. Halle tell you that he had mentioned any amount,— A. No.

Q. —that Belknap had? A. I don't think he did. Now, 3032
I don't really think that Mr. Halle even mentioned it. Now, he may have, but I don't want to deny, if he said that he did—I would rather take his version than my own. My impression is that he did not. My impression is that I didn't say anything. I am quite sure that I didn't say anything.

Q. Well, were there any other cases among these you mentioned where you were paid substantial fees and did not take any part of the work? A. Oh, yes, I have had many fees where I haven't done much work. I had a case here where I took—Crawford Estate—where I had—I got a fee of thirty-eight thousand dollars, I didn't do much work in that case.

Q. Crawford Estate? A. Crawford Estate. Maybe you know something about that case. 3033

Q. No, I don't. A. Well, we settled the case after it came into court, after we argued the case, why, we settled it. Mr. McCracken was associated with me in that case. General Schnader was on the other side. Many a case, that I have got a fee—the Associated Gas and Electric, I got ten thousand dollar fees, fifteen thousand dollar fees.

Q. And didn't do anything? A. Well, I sat—I didn't do really hard work, in other words, I didn't sit down by the day and figure out so much a day. At the end of each case I would say it is so much money. I have never had my fees questioned, never, with a client.

Q. Where were those cases you referred to? Were they in the District Court? A. Some of them were in the State courts.

Q. Yes. A. Some of them were in Harrisburg. Some of them were in the Orphans' Court, some of them in the District Court.

Q. Do you know whether Judge Davis ever suggested to any litigant that you should be retained in a case? A. I never received any case for Judge Davis suggesting it.

Q. You don't think your retention by Mr. Belknap, for example, was on account of any suggestion from Judge Davis? A. I don't know, I never heard of it.

Q. Never heard of it? A. Nor in any other case.

Q. Nor in any other case. I think you said you are not a member of the Philadelphia bar? A. No, I am a member of the Federal Court, but not of the Philadelphia bar.

Q. Did you have an office in Philadelphia? A. No, I had simply an office where they could serve papers, in the District Court, I had it in 1421 Chestnut Street, where my brother was associated, with Brown and Williams, General Brown in his lifetime, he had an office there.

Q. Did he have an office there— A. Yes.

Q. —or just a desk? A. He had the adjoining office, and the door was open between General Brown's office and his office most of the time.

Q. Was your office in New York a law office,— A. No.

Q. —or receiver's— A. Receiver's office.

Q. Receiver's. A. But all the clients I had were Pennsylvania—they all had Pennsylvania business.

Q. Your real law office was in Scranton? A. That is right.

Q. Did you have a large office there, or small? A. Yes, we had a pretty—at one time we had one, two, three, four —five offices.

The Master: I think that is all.

Mr. Harris: I think I have one or two questions suggested by what Your Honor has to say.

Mr. Thiess: I had——

Mr. Harris: Go ahead.

By Mr. Thiess:

Q. Was your name on the door of your brother's office? A. Yes, on the side.

By Mr. Harris:

Q. Now, Mr. Kaufman, as I understand your testimony, 3038
you regarded your retainer by Mr. Belknap as being a promise to pay you well for being available for any matters that the Universal Oil Products Company might have to refer to you, is that right? A. Well, he didn't tell me that he would pay me well, but this is what I assumed.

Q. Well, I thought you said that he said you would fare better if you didn't ask for a retainer? A. Yes, he said, "You will fare much better if you will wait until the matter is disposed of, the case is disposed of."

Q. And you understood that there was not only the Root case in which you might be called upon for services, but that other litigation was contemplated in Pennsylvania, and 3039
possibly in other places? A. That is correct, I held myself available for anything they wanted.

Q. Mr. Belknap told you that the company didn't have a Pennsylvania lawyer? A. That is correct.

Q. And would like to have you available for such services as might be turned over—you might be asked to render from time to time? A. That is correct.

Q. And thereafter you did hold yourself available? A. I did.

Q. And you, whether or not you—— A. In fact, I tried to——

3040 Q. Whether or not you were offered other business by other oil companies, you had agreed to disable yourself from taking any such business? A. That is correct.

Q. And at the end of three and a half years, in which you had seen your client recover—establish its basic patents and put itself in the position of making its properties worth many millions more, you regarded ten thousand dollars a year, even for standing by,—— A. That is exactly what I thought——

Q. —as being a reasonable retainer? A. That is exactly my thought in the matter.

3041 Q. It is not unheard of in your practice, I assume, particularly if you have been in New York for a number of years, to know of lawyers who receive ten thousand dollars a year by way of stand-by retainers, is it? A. I thought that we were charging good fees in Pennsylvania, but when I came over in New York and I discovered the fees that they were getting, I made up my mind we were just a bunch of pikers over here in Pennsylvania.

Q. And, in effect, when you agreed to accept twenty-five thousand dollars you had reduced your annual retainer to seven thousand dollars a year for those three and a half years, is that correct? A. Whatever it figured out.

3042 Q. Approximately—— A. Approximately.

Q. —seven thousand dollars, and based on your experience did you regard that as an excessive amount to hold yourself available for a client, even if you didn't perform any services? A. I didn't think so, particularly in view of the fact of the great success they had, notwithstanding I hadn't performed any real work.

Q. Not only you were disabled from taking any other oil clients, if such had been offered you, but also, you had to hold yourself available for any work that the company might see fit to give you? A. That is correct.

Q. Is that not right? A. That is correct.

Q. And that, of course, to that extent might have interfered, had they called on you for work, with other practice that you had? A. That is true.

Mr. Harris: I think that is all.

Redirect Examination by Mr. Thiess:

Q. Mr. Kaufman, just one other question. Was it your practice to render bills to your clients for services rendered? A. Very——

Q. Itemized bills? A. Very seldom, only, with very few exceptions, when they wanted it, otherwise I would call them 3044
on the phone, come over and talk to them, and say, "What is your thought in the matter?", or, "What is your charge?"

Many a time I went over to the different companies and discussed the matter, and they simply said, "What do you think you ought to have?"

I would say, "Ten thousand dollars", or fifteen thousand.

"Well, we will think it over and then let you know.", and in a few days I would get a check.

Q. Well, did you keep any diary of any kind in which you specified the time that you put in on the various cases? A. No, I was never requested by any client that I ever had—you see, I was practically alone and I knew exactly how 3045
much work I was doing and what I wasn't doing. I didn't keep any direct diary as big law firms usually have, in putting down every time they write a letter, every time they have a conference and every date that we have with them, I never did that.

Q. Well, when you did render itemized bills how did you itemize the—— A. For services rendered.

Q. And you never rendered a bill, then, in which you itemized—— A. Itemized?

Q. —your services? A. Never, never rendered a bill in my life for itemized services.

Mr. Harris: Is that all?

Mr. Thiess: Just a minute.

Mr. Harris: I have one other.

The Witness: When I say never, I think one bill, or two bills of some of the subsidiaries of one of the companies, I think I did, but it was mostly general, it wasn't trips, trips here——

Recross Examination by Mr. Harris:

3047 Q. Mr. Kaufman, in your experience it is not unusual for lawyers to practice alone or who have small staffs not to keep diaries, is it? A. I don't know. I never kept one, I know that.

Q. And isn't it your experience that usually it is only firms which have—— A. You mean as to the amount of work?

Q. Yes. A. That is true, in general, but most of the big firms I think, if I were back——

Q. I said a small firm. A. No.

Q. A firm, or man practicing alone. A. Well, even a small firm, I realize the importance of it today, I think if I were to get back into active practice I would keep a diary every day.

3048 Q. Of course, in a big firm—— A. Just because I would know where I was, for instance, in this—well, I better not discuss that.

Q. Well, of course, in a big firm, where perhaps anywhere from three to twenty men may work on a case, there is only one way you can know how to make a bill out, and that is to have everybody's time. A. That is correct.

Q. Now, Judge Haight knew during the entire period that you have described that you were associated as counsel for the Universal Oil Products Company, did he not? A. He did.

Q. And he knew, I suppose, that you expected to be paid. A. I assume so.

Q. There was never anything said about your not being paid? A. Never.

Q. And he knew that you were available for any services that he saw fit to call upon you for? A. That is right.

Q. And do you know that when the matter of your payment of twenty-five thousand dollars, thirty-five thousand that you asked for, but twenty-five thousand that was paid, came up for consideration, that Judge Haight was asked by Mr. Halle whether twenty-five would be satisfactory, and Judge Haight said he thought it was fair, do you know that? 3050
A. Well, I didn't know it until later, I didn't know it at the time. I knew it later in a discussion.

Q. Did Judge Haight tell you that? A. He told me that he knew all about it.

Q. And he told you that he had approved of a payment to you—— A. That is correct.

Q. —of twenty-five thousand dollars to the termination of the Root case? A. That is right.

Q. And he knew how much or how little you had done? A. Absolutely.

Q. And he was the chief counsel in the case, was he not? A. He was. 3051

Mr. Harris: Well, that is all.

By Mr. Thicss:

Q. Do you remember when Judge Haight told you that he approved this twenty-five thousand dollars? A. Why, he told me that when—when I went over to see him about some money, and we were discussing the—I think it was in connection with the Crew-Levick case, and then is when he told me about the settlement of a million dollars in the other case.

By Mr. Harris:

Q. The Senator Reed case? A. No, million dollars in the——

Q. Oh, I see. A. In the Mid Continent case, then I discussed the twenty-five thousand dollars, and he started to laugh, and says, "I know all about it, I know all about it."

Well, then, I suggested he go over and see him, and he said, "You better go over and see the old man yourself", so I knew he knew all about it, I did know he knew all about it, because I hadn't brought it up before that.

Q. Did you also know Mr. Whitney, of the firm of Cravath, deGersdorff, Swaine and Wood, and Mr. Dwight, of the firm of Hughes, Sherman and Dwight, had discussed with Mr. Halle and Judge Haight the matter of your claim
3053 of thirty-five thousand dollars and that both of those gentlemen had also approved of the payment of twenty-five thousand dollars to you? A. I didn't know that.

Q. Judge Haight didn't tell you that? A. He didn't tell me that.

Mr. Harris: All right, that is all.

By the Master:

Q. You don't know whether Judge Haight may have suggested your name to Mr. Belknap? A. I am sure he didn't. I don't know——

Q. Sure he didn't? A. I don't know; but I don't think so.
3054 Q. But you never had any acquaintance at all with Mr. Belknap, and you were not a patent lawyer at that time? A. That is correct.

Q. I was wondering how he happened to get your name. A. I didn't ask him.

Q. No.

Mr. Harris: Well, Your Honor, I submit that that is not unusual. He wasn't hired as a patent lawyer. It is certainly not unusual to hire general practitioners either for general services in patent cases or even for patent service. My partner, Judge Hughes, when

3055

he was practicing, argued a great many patent appeals, and he was certainly not a patent lawyer, in any sense of the word.

The Master: Yes, I have argued a few, without much success, but still—

(Discussion off the record.)

The Master: Is that all, gentlemen, for today?

Mr. Thiess: That is all.

The Master: Now, you want to recall Mr. Kaufman, do you?

3056

Mr. Harris: I would like to have the privilege—I doubt if there is anything to recall him about, but I would like to have the privilege of looking at his examination.

(Adjourned until Thursday, October 29, 1942, at ten o'clock A. M.)

3057

058 **Transcript of Hearing, October 29, 1942**

Meeting held before Thomas Raeburn White, Esq., Master, at the office of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Thursday, October 29, 1942, at 10:00 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, ESQ., Master.

J. BERNHARD THIESS, ESQ. (77 West Washington Street, Chicago, Illinois).

059 THORLEY VON HOLST, ESQ. (77 West Washington Street, Chicago, Illinois).

Amici Curiae.

ROBERT W. POORE, ESQ. (77 West Washington Street, Chicago, Illinois).

SIDNEY NEUMAN, ESQ. (77 West Washington Street, Chicago, Ill).

Counsel accompanying *Amici Curiae.*

W. P. [illegible] GERMAN, ESQ.

RALPH S. HARRIS, ESQ. (100 Broadway, New York, N. Y.).

EDWARD J. O'MARA, ESQ. (15 Exchange Place, Jersey City, N. J.).

060 JOHN R. MCCULLOUGH, ESQ. (100 Broadway, New York, N. Y.).

representing Universal Oil Products Company.

Evidence on Behalf of Amici Curiae (Continued)

J. WARREN DAVIS, having been duly sworn, was examined and testified as follows:

Direct Examination by Mr. Thiess:

Q. Judge Davis, you were a Judge of the Circuit Court of Appeals for what period? A. From 1920 until 19—I

ink it was '41 that I retired—resigned. I retired, I think was '39.

Q. You reside and have resided at Lawrenceville, New ersey, for a long period of time? A. Yes.

Q. You say you retired as a Judge of the Court of Ap- eals in '39. A. Yes.

Q. Is it a fact that you retired after you learned of n investigation which the Federal Government was con- ucting of your affairs. A. Yes.

Q. When was it that you first learned of this investi- ation which was being conducted by the Federal Govern- ent? A. I think it was early '39. I was in Florida when 3062 heard of it.

Q. When you say "early", would you say March or April? Well, I can't tell just the time I learned of it. It was ometime while I was in Florida, between January and, I ould say, April.

Q. Was your income tax schedules ever investigated by he F. B. I.? A. Not to my knowledge.

Q. Do you know, can you state whether the Government ver impounded your bank statements and other financial ecords. A. Not to my knowledge.

Q. Now, you resigned as a member of the Circuit Court f Appeals of the Third Circuit when? A. I do not have 3063 he date, but I think it was sometime in '41. My memory s poor on dates; but that is my recollection.

Q. Did you resign subsequent to the time that a resolu- ion was presented in Congress proposing impeachment pro- eedings? A. I didn't know that one was presented.

Q. Did you have any knowledge that—— A. I—I think should qualify that, I understood that the Attorney Gen- ral had spoken to some members of the House, or written o them, but if any resolution was ever presented in Con- ress I never heard of it.

Q. I didn't know, I was just trying to ascertain. Well, id you resign before or after—— A. After that.

3064 *J. Warren Davis—For Amici Curiae—Direct*

Q. Now, subsequent to the time that you resigned as a Judge of the Circuit Court of Appeals for the Third Circuit did you still receive your salary? A. Yes.

Q. You still receive it at the present time? A. Yes.

Q. Have you ever invested in stocks and bonds. A. Regretfully, yes.

Q. And when did you first start buying stocks and bonds, Judge Davis? A. That I cannot tell you, but it was a year or two before the crash.

Q. Well, could you give us a general statement as to what extent that you purchased stocks and bonds, and the
3065 nature of the stocks and bonds at the time of the crash, in 1929? A. I can tell you generally, but not in detail. I purchased mostly New York Bank stocks, and had at the time of the crash most all of the stocks which were registered in my name were New York Bank stocks. There were some other stocks, but I do not now recall just what they were.

Q. Can you state generally to what extent you had invested in that type of stock? A. I think I had at one time seven or eight hundred shares of the Public National Bank stock, of New York. I exchanged some of those for Chase stock, and some for another bank, I think the Manhattan,
3066 but just how much it was I do not recall, but I had substantially seven or eight hundred shares of Public National Bank or its equivalent in part in other banks.

Q. Have you any idea at the present time how much that involved in dollars and cents? A. I do not have any definite idea. I think that in the Trenton Banking Company was something like one hundred and maybe twenty thousand dollars, and in the Swedesboro National Bank I would say something in the twenties—thousand dollars—and in the Swedesboro Trust Company a less amount. I think when I made a compromise, to which I assume you will come,——

Q. Yes. A. —that there was eighteen thousand and some dollars due in the Swedesboro National Bank, and six

thousand and something due on my note in the Swedesboro Trust Company. That was after disposing of collateral.

Q. Now, these figures that you gave were the money that you owed to the bank, is that correct? A. That is right.

Q. Do you know how much of your own money was involved in these transactions? A. How much, what?

Q. Of your own money, that you had not borrowed from a bank? A. Yes, I know approximately.

Q. Could you give us that? A. The first purchase that I made, I deposited a thousand dollars—I think it was a thousand, it might have been more than that, it was around a thousand, maybe two thousand anyway, ten per cent. of the stock that I purchased through the Trenton Banking Company, and that stock went up by leaps and bounds, and I began to pyramid it until when the crash came, I had; if I had had judgment a few days before enough to sell it, around two hundred, two hundred and fifty thousand dollars, in equity. 3068

Q. Now, do you remember from or through whom you purchased these stocks and bonds, at the present time? A. I purchased them through the bank, and I don't know from whom, but I would notify the bank to purchase stocks of such amount for me, and whoever looked after it in the bank did it. 3069

Q. Did you consult stock brokers, or from whom did you get advice regarding the purchase of these stocks? A. Oh, I talked to many—talked to everybody about it, pretty nearly, as everybody else was doing.

Q. Did you ever consult with Morgan S. Kaufman respecting the advisability of purchasing or selling stocks and bonds? A. Yes, I have talked to him about it.

Q. Do you know, have you any recollection of any times when you did talk to him, so that you could tell us when you did talk to him, and what the substance of the conversation was? A. No, I haven't.

Q. You can't fix any of those? A. I can't fix any date.

Q. Can you—— A. I talked to him as I talked to, oh, many, many people about it, and I can't fix any date. I talked to many people from the time I began to buy stocks, until the crash came.

Q. Did Mr. Kaufman advise you as to the purchasing of stocks, what stocks to buy? A. I don't recall that he did. He might have done it, but I do not recall it.

Q. Have you any recollection at this time—or, first I want to ask you, of course, you knew Mr. Steedle? A. Yes.

3071 Q. Have you any recollection of ever telling Mr. Steedle that Kaufman was good at stocks and that if he would consult him, he might give him some real advice in the purchase of stocks and bonds? A. I don't recall telling him if he would consult him he would give him advice, but I told him, as I recall it, that I understood he was rather wise about purchasing stocks.

Q. Now, on or about 1929 isn't it also a fact that Mrs. Davis was heavily indebted to the banks? A. Well, she was indebted to some extent, but I do not know now just to what extent—not—when I gave you the figures, the number of shares of stock which I owned, I included what she owned.

Q. I see. Well, then, it is true, is it not, Judge Davis, 3072 that your liabilities were greater than your assets for the period 1933 to 1936? A. Yes.

Q. Now, prior to 1936 what, if anything, had you done to liquidate your indebtedness and pay the interest accumulated on said indebtedness? A. I had paid the interest on the indebtedness for the first few years at the rate of interest, and then the banks reduced the interest, and I kept that paid up until compromise was effected.

Q. Now, in March of 1936 you borrowed four thousand dollars from Mr. Ungerleider, that is correct, is it not? A. I think it is March.

Q. And at that time you were insolvent by an amount close to one hundred thousand dollars, is that correct? A.

It might have been that much. I hardly think it was that much.

Q. Well, was it close to that? A. I think that when the Trenton Banking Company disposed of the collateral my indebtedness to them was around sixty thousand dollars, and my indebtedness to the Swedesboro National Bank was around eighteen or nineteen, and around six in the Swedesboro Trust Company.

Q. And your financial situation in 1935 was the same, was it not? A. Yes.

Q. Now, isn't it a fact, Judge Davis, that during the year 1932 you were unable to pay monthly instalments of three hundred dollars to a bank because you required all the money which you had for living expenses, taxes, insurance, et cetera? A. I might have been able to pay it to one bank, but I wouldn't pay it to that particular bank unless I paid an equal amount to other banks. One bank was pressing me for that amount. 3074

Q. And you tried to distribute it among the banks? A. I wouldn't differentiate between the banks. I was pressed by another bank to give them a mortgage on my home and make an assignment to it, and I wouldn't do that. If anything happened my determination was that all my creditors should participate share and share alike, pro rata. 3075

Q. Now, isn't it also a fact that in 1936 your financial condition was such that you had difficulty in obtaining the necessary funds to take a vacation in Florida? A. Well, I wrote Mr. Tumulty—that is what you have in mind?

Q. That is what I have in mind. A. —somewhat to that effect, and that arose in this way. Mr. Tumulty suggested to me, or asked me to buy some stock here in Philadelphia, of the Bankers Trust Company, said the stock had been oversubscribed and if I would buy some stock there, why, we would make some money out of it, and if I would get a block of stock allotted to me, he would pay for it and we would

share the profits, and he did pay for it, and I did not want, or propose, and did not put my own money in paying the interest or anything on the principal, and we went along that way, and when it came time to pay the interest or anything on the principal, and I heard from the bank, I would always notify him. At one time I told him that I did not have any money of my own to put in it. I could have taken a vacation, but—any arrangement between us was his obligation and not mine, and he paid it all, principal and interest.

3077 Q. Well, at the time that you wrote this letter, Judge Davis, were you pressed for funds to take this vacation? A. I don't think that I was absolutely pressed for funds, I think I could have taken the vacation, but I didn't want to put my money into paying this obligation, in accordance with our agreement.

By Mr. Harris:

Q. Was that in 1936?

By Mr. Thiess:

Q. Was that in 1936? A. I think that letter was written
3078 around there. I haven't the exact date.

Mr. Harris: I just wanted to know what the date was, so I could interpose my usual objection, Mr. Thiess. It was in a year—was it after the determination of the Root case?

By Mr. Thiess:

Q. I can show you that letter, Judge Davis. It is a letter from you to Mr. Tumulty—— A. That is right.

Q. —under date of March 7, 1936 A. Is it January?

Q. Or, January; January 7, 1936. A. Yes.

Q. That is the letter you have reference to, is it not? A. That is the letter.

Mr. Harris: I don't see anything there where the Judge said he couldn't afford to go to Florida.

The Witness: Well, I said this—shall I read it?

Mr. Harris: We are reading it.

The Witness: Oh, I didn't know you had it.

By Mr. Thiess:

Q. Well, in this statement in this letter, Judge Davis, where you say, "I would like to go to Florida for a few weeks around the 20th or 25th of this month . . .", you were referring to a vacation in Florida, were you not? A. Yes. 3080

Mr. Harris: Well, he doesn't say he couldn't afford to go. I don't see that. As usual, you take a little statement, which might mean something else, probably means something else, and then construe it. He didn't say he couldn't afford to go to Florida. He said if he went to Florida he would have to use all the money he had available.

Mr. Thiess: Well, he has testified as to what this statement in the letter means.

Mr. Harris: Yes, I was only objecting to your characterization of it, Mr. Thiess. 3081

Mr. Thiess: All right.

The Master: We have the letter before us.

Mr. Harris: Well, the letter hasn't been marked. It should be.

Mr. Thiess: All right, I will offer this letter of January 7th, 1936, from J. Warren Davis to Hon. Joseph P. Tumulty in evidence, as Amici Exhibit 93.

Mr. Harris: Now, Your Honor, I would like to interpose at this time, and I repeat, so as not to interrupt Judge Davis' testimony, my general objection to

3082 *J. Warren Davis—For Amici Curiae—Direct*

any testimony after the conclusion of the Root case, as not being in any wise pertinent to this inquiry or binding upon the Universal Oil Products Company.

The Master: Well, I will overrule the objection for the reasons already given on the record.

Mr. Harris: I consider I have a continuing objection and exception.

The Master: That is understood.

Mr. Harris: Thank you.

(Photostatic copy of letter dated January 7, 1936, from J. Warren Davis to Hon. Joseph P. Tumulty was marked Amici Exhibit 93.)

3083

By Mr. Thiess:

Q. Judge Davis, did you in March, 1936, take one thousand dollars out of your strong box, which you had in your office and loan it to a David Lewis? A. Yes, at least, I think I got it out of my strong box; I loaned that money, but just where I got it, whether out of the bank or my safe deposit box or the strong box in the office, I do not recall.

Q. Can you state at this time how much cash you had in your strong box? A. No, I cannot.

Q. In March of 1936? A. I cannot tell you. I did not keep a record of the amount of cash in my strong box, and I cannot tell you how much.

3084

The Master: What was the date you gave him, Mr. Thiess?

Mr. Thiess: That was March, 1936.

By Mr. Thiess:

Q. Isn't it also a fact, Judge Davis, that you have previously testified that as of March, 1936, you were unable to state within four thousand dollars how much actual cash you had in your strong box? A. I do not know what my

testimony was in that. Mr. Gahagan was trying to pin me down to some definite statement, and went up as far as, I think it was fifty thousand dollars, and could I tell within fifty thousand dollars, and he was trying to get me to guess, and I did not propose to guess. I say, I do not know how much I had in there.

Mr. Thiess: Well, let's see the testimony.

Mr. Harris: Is this the second trial?

Mr. Thiess: Yes, page 2080.

By Mr. Thiess: 3086

Q. Well, I am reading from page 2080 of this record, Judge Davis. A. Yes.

Q. "Now, Judge Davis, in 1936 you said you made a loan to one Davis Lewis in the amount of $1,000;——

A. David Lewis.

Q. David Lewis, yes. A. You said Davis.

Mr. Harris: Yes, you did.

Mr. Thiess: I beg your pardon.

By Mr. Thiess: 3087

Q. "... is that right, sir? A. Yes.

"Q. And you placed that some time around March of 1936? A. Yes.

"Q. Either before or after? A. Yes.

"Q. How long had that $1,000 been in your strong box, I believe you said? A. I could not tell you that.

"Q. Had you received it just a few days before you made the loan, or had it been there a considerable amount of time? A. I put money into that box from time to time as I drew it out in cash from my bank account, and what amount was in there at that time,

and how long it had been in there, I cannot now tell you.

"Q. Well, when you took the $1,000 out of your strong box—and it was your strong box, is that right? A. Yes, I think it was.

"Q. When you took it out of your strong box was there any cash left in the box? A. I think there was.

"Q. How much? A. I do not know.

"Q. Well, give me an approximation, Judge Davis, within $1,000. A. That would be a guess, and I don't want to venture a guess. I cannot tell you.

3089 "Q. Can you give an approximation within $2,000? A. My answer, Mr. Gahagan, must be the same as it was before; just the amount of cash that was in there I cannot now recall, and so cannot tell you. If I were to make an answer, it would be a guess. If you were to ask me if $50,000 was in there, I would say no.

"Q. Let's not go to $50,000 yet. Let's go to $3,000, that is the next step. A. That I cannot tell you.

"Q. Was $1,000, Judge Davis, in that cash deposit box? A. Mr. Gahagan, I am doing my best to answer
3090 your question correctly.

"Q. Now, let's take the next figure, $5,000, Judge Davis, within an approximation, can you tell me how much cash was in your box at that time? A. If you were to ask me whether I think that is true now or not, I would say that I do not think I had that much left in there, but how much I had, I cannot for my life tell you.

"Q. In any event, Judge Davis, in March you had at least $1,000 there? A. Yes, I did.

"Q. That was what you took out to give to Lewis; is that right, sir? A. Yes.

"Q. And that was money that you were free to do with, whatever you wanted to; is that right, sir? A. Yes, it was mine."

Q. Did you so testify? A. I think I did.

Q. Now, Judge Davis, can you produce the papers called for in paragraph 9 of the subpoena? Have you got the subpoena there? A. Mr. Thiess, in order to expedite the matter and save time, I wonder if you could ask me about all of those, and I could tell you just what I have, under each paragraph. 3092

Q. That would be perfectly O. K., we could do that right now. Have you got your copy of the subpoena? A. I think it is in here.

Q. All right. A. So that it might be intelligible, if you could ask me what you requested to produce, or called for under the subpoena under each paragraph, then I could read——

Q. That is right. A. Read a reply to it and tell you just what I have.

Q. All right, paragraph 1:

"All contracts, agreements, documents, and all supplements thereof,—or copies thereof if the originals are not in your possession—made and entered into by and between Charles L. Stokley and J. Warren Davis, relating to the reconveyance by J. Warren Davis of certain properties deeded to him on or about February 27, 1936, by Charles L. Stokley and or his wife, Delta M. Stokley, which agreement, or undertaking to transfer or reconvey, is referred to in the letter of J. Warren Davis to Charles L. Stokley, dated March 10, 1936, or any other document, memoranda, or any writing whatosever—or copies thereof if the 3093

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originals are not in your possession—whether signed by either or both parties, or their agents or appointees, or whether unsigned, pertaining in any way to an agreement of J. Warren Davis with Charles L. Stokley and/or Delta M. Stokley, and his, her, or their agents or appointees, for the reconveyance by said Davis to said Stokley and/or Delta M. Stokley, his wife, his, her, or their agents, of property, whether real or personal, conveyed by said Stokley and his wife, Delta M. Stokley, to said Davis to secure payment of the loan in the sum of $4,000 made by said
3095 Davis to said Stokley on or about March 10, 1936."

A. I have nothing in obedience to that subpoena——

Q. Nothing—— A. —except a carbon copy of the letter of March 10, 1936, and in that letter I agreed to return the property when the four thousand dollars with interest was paid. I stated that a contract would be signed to that effect.

My recollection and discovery is that—so far as I can discover and remember—that contract was never drawn and never executed, and so what Mr. Stokley has and what I have is the letter agreeing to return it and to draw a con-
3096 tract to that effect.

Q. Have you got that letter here? We have got a copy. A. You have got a copy, and I have a copy, it is here, everything I am talking about is in here.

Mr. Thiess: I think it would be well to identify that letter now.

(Discussion off the record.)

By Mr. Thiess:

Q. Suppose I ask you whether this photostatic copy of this letter under date of March 10, 1936, from J. Warren

Davis to Mr. Charles L. Stokley is the letter that you referred to.

(The witness examined the letter.)

A. Yes, this is the letter.

By Mr. Harris:

Q. This is the original of which you have produced a carbon copy, I assume? A. This is a photostat.

Q. Of the original? A. Of the original or a copy—well, I think the original. 3098

Q. It is signed? A. Because the carbon is in my possession and I think has never been photostated.

Mr. Thiess: That is right.

By Mr. Harris:

Q. And, furthermore, the one produced has the signature on it? A. Yes, it does.

Q. And it is on the letterhead of the United States Circuit Court of Appeals? A. That is right, and in that I said, ". . . . I will send you an agreement to the effect that as soon as the money is repaid to me this property will be reconveyed to you." 3099

Mr. Harris: I assume the one produced by Mr. Thiess was gotten from Mr. Stokley's file, probably.

Mr. Neuman: From the Master.

Mr. Harris: I didn't mean that you got it; I mean eventually it was derived from that source.

Mr. Thiess: I would like to offer this letter in evidence as Amici Exhibit 94.

(Photostatic copy of letter dated March 10, 1936, from J. Warren Davis to Mr. Charles L. Stokley was marked Amici Exhibit 94.)

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The Witness: Now, you want number 2, Mr. Thiess?

Mr. Thiess: Yes, if you please.

The Witness: Number 2 calls for:

"All records, data, books or memoranda of account, ledgers, journals, books of entry—or copies thereof, if the originals are not in your possession—showing, or pertaining to, the payment on or about March 10, 1936, by J. Warren Davis to Charles L. Stokley of the sum of $4,000, and also showing pay-
3101 ments to, or for the account of, or by receipt by, J. Warren Davis of any moneys, securities, valuables, or commodities, as repayment, in whole or in part, of said $4,000 by Charles L. Stokley."

Mr. Thiess: That is right.

The Witness: And in reply to that what I have is a check, or photostatic copy of a check for four thousand dollars, a letter sending the check, copy of a letter sending the check to Mr. Stokley, two deeds conveying the property in question, a statement of the payments made by Mr. Stokley, three letters sending the last three checks, which were this year, as payment on it, and a diamond, which comes under
3102 your head of other securities, as I interpret it, a diamond which is now in the safe deposit box of Mrs. Davis here in Philadelphia.

By Mr. Thiess:

Q. Could we see those letters? A. Yes, I thought I would turn them all over to you, Mr. Thiess, when you are through.

Mr. Harris: I think we would like you to produce them seriatim, so we can look at them as you go along,——

The Witness: All right.

Mr. Harris: —rather than just turning them over to Mr. Thiess. We don't know what use he will make of them.

The Witness: I thought that I could expedite the matter, but I will do whatever you say.

Mr. Harris: Well, we will have to read them during the course of the hearing anyway, Judge Davis. It won't take us more than a moment or two.

The Witness: Well, then, we will be here next week.

Mr. Harris: Well, it may be. Well, all right, turn 3104
them over to the Master.——

The Witness: I will do whatever the Master says.

Mr. Harris: —and let counsel for both sides have access to them. I assume that Mr. Thiess, with his usual meticulous method, would quiz you about each one of them, anyway, but if he is not going to, turn them over to the Master and we can look at them.

The Witness: Well, I assume that Mr. Thiess knows just what is in these and he will ask me only things that he thinks pertinent to the issue.

Mr. Thiess: All right.

The Master: Will you want to offer them or mark 3105
them for identification, Mr. Thiess, at this time?

Mr. Thiess: Well, I think it would be well to—I don't see why Judge Davis can't turn those letters over to us and we can look them over and see whether we want to use them, and whether we have seen copies of them. We don't know just what letters are in this batch.

Mr. Harris: Well, we know even less about it than you do. I thought if they were in the Master's possession they would be available to both sides.

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Mr. Thiess: Well, I thought possibly that we might be able to examine them this noon.

Mr. Harris: Well, when are we going to examine them?

The Witness: Couldn't you examine together?

The Master: I was going to suggest, possibly you could examine them together.

Mr. Harris: Well, if they are passed up, my assistants and associates can be examining them during the progress of the examination as fast as they can
3107 look at them. Why don't you let Mr. German or somebody look at them, and pass them over, as we go along?

Mr. Thiess: Mr. German isn't with us——

Mr. Harris: I don't mean Mr. German, I mean Mr. Neuman. That is the one thing Mr. German doesn't do.

Mr. Thiess: All right, let's proceed as we have gone.

By Mr. Thiess:

3108 Q. May I have those folders that you have referred to? A. That is two of them.

Q. That is 1 and 2? A. 1 and 2.

Q. I see. A. A summary of the contents of that folder I have given you.

Q. Yes. A. Now, 3 calls for:

"All memoranda, records, books of account, correspondence, telegrams, diaries, writings, and print-

ings of every nature and of whatsoever date—or copies thereof if the originals are not in your possession—referring or pertaining in any way to payments, whether in cash or otherwise, or cancellations of indebtedness, made by J. Warren Davis, or his agent or nominee, to Charles L. Stokley, or his agent or nominee, or by Charles L. Stokley, or his agent or nominee, to J. Warren Davis, or his agent or nominee, subsequent to January 1, 1930;".

I return in obedience to that subpoena—when I say I 3110
have returned, I mean I am giving you all that I have and a thorough search can disclose.

Q. Yes. A. In obedience to the third paragraph of the subpoena I have here twenty-six checks for fruit, amounting to $286.56, that is, twenty-six checks which I have sent to Mr. Stokley for fruit.

Q. And that amounts to how much? A. $286.56, and certain letters, some of them are here and some of them are in paragraph, presented in paragraph number 6, where I thought they would be more appropriate, referring to these payments for oranges. That is the letters.

Q. Yes. A. And certain credits given him for oranges, 3111
contained in paragraph 2, that is, the credits are on the statement of all his payments which I have here, and which I will present.

Paragraph 4 calls for:

"All contracts, agreements, documents, and all supplements thereof, of whatsoever date,—or copies thereof if the originals are not in your possession—made and entered into by and between J. Warren Davis and Samuel Ungerleider, or by and between

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either of them and any other parties whatsoever, (a) pertaining or relating to the issuance and delivery by the said Ungerleider to the said Davis of a certified check dated March 10, 1936, on the Public National Bank & Trust Company of New York, in the amount of $4,000, payable to the order of the said J. Warren Davis, and (b) pertaining or relating in any way to the transaction of which the delivery of said check was a part."

All that I have, called for by that paragraph, is a copy of
3113 a check for four thousand dollars mentioned above in paragraph 2, and a letter mentioned in paragraph 1 above.

Mr. Neuman, do you want to begin with 2, now?

(The witness produced papers.)

The Witness: That was 4.

Mr. Thiess: 4, yes. We are on 5.

The Witness: 5, 5 calls for:

"All memoranda, correspondence, telegrams, records, data, books or memoranda of account, ledgers, journals, and books of entry, writings, and printings of every nature and of whatsoever date—or copies
3114 thereof if the originals are not in your possession—and whether with said Ungerleider or any other person, firm, or corporation, referring or pertaining in any way to (a) the transaction of which the issuance and delivery by the said Ungerleider of a certified check drawn on the Public National Bank & Trust Company of New York, dated March 10, 1936, and payable to J. Warren Davis, was a part, or (b) any payments in full, or on account, by way of repayment of said sum of $4,000, by or on behalf of J. Warren Davis to said Ungerleider, or to his account."

All I have and which is here presented is a copy of a check for four thousand dollars—by a check I mean a photo-

static copy—mentioned in paragraph 3 and in paragraph 4 above, and also a statement of all of my payments to Samuel Ungerleider on my indebtedness to him.

I have other indebtedness to Mr. Ungerleider than the four thousand dollars; but how he has allocated the payments I do not know.

I have here also twenty-eight letters and copies of letters transmitting the checks and acknowledgments thereof by him, together with the cancelled checks.

Does Mr. Neuman want 5, or is he not through?

Mr. Theiss: Well, I think we can give it to him,—— 3116

The Witness: All right.

Mr. Thiess: —and he can move right along.

The Witness: All right. Number 6 calls for:

"All correspondence or telegrams, either with Thomas H. Cooley, Charles L. Stokley, Morgan S. Kaufman, or any other person, firm, or corporation, and all contracts in writing, memoranda, reports, records, books of account, receipts, diaries, writings, and printings of every nature and of whatsoever date—or copies thereof if the originals are not in your possession—referring or pertaining in any way to 3117

(a) the purchase, and or negotiations leading to the purchase, by Morgan S. Kaufman from the town of Mount Dora, Florida, for the sum of $10,000, of certain properties as described in the deed dated November 25, 1935, from the town of Mount Dora, Florida, to Morgan S. Kaufman;

(b) the conveyance, and/or negotiations leading to the conveyance, by Charles L. Stokley of certain properties to Morgan S. Kaufman by the deeds dated November 25, 1935, of Charles L. Stokley and Delta M. Stokley, his wife;

(c) the agreement of reconveyance, and/or negotiations leading to said agreement made by and

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between Morgan S. Kaufman and Charles L. Stokley on November 25, 1935;

(d) payments on account of principal, interest, taxes, or any other obligations, past, present, or future, of either the said Morgan S. Kaufman or the said Charles L. Stokley relating in any way to items (a), (b), and (c) of this paragraph."

All that I have and could find relating to (a), (b), (c) and (d) in the subpoena are twenty-nine letters and copies of letters, some to Mr. Cooley, some to
3119 Charles L. Stokley, and ten telegrams or copies thereof.

The next is 7. The subpoena calls for:

"All memoranda, correspondence, telegrams, diaries, or writings of every nature and of whatsoever date, and whether official or personal,—or copies thereof if the originals are not in your possession—with, concerning, referring, or pertaining in any way to any interest of Morgan S. Kaufman and/or David Kaufman in the case of *Universal Oil Products Company* v. *Root Refining Company*,
3120 whether in the United States District Court of Delaware or in the United States Circuit Court of Appeals for the Third Circuit."

I have no memoranda—this is the return to that paragraph—I have no memoranda, correspondence, telegrams, diaries or writings called for by 7 of the subpoena or anything else.

8: "All memoranda, reports, conference notes, data, drafts of opinion, correspondence, diaries, and writings of every nature and of whatsoever date, and whether official or personal—or copies thereof, if the originals are not in your possession

—concerning, referring, or pertaining in any way to the consideration by the United States Circuit Court of Appeals for the Third Circuit, or any Judge thereof, of the appeals entitled '*Root Refining Company* v. *Universal Oil Products Company*' Appeals Nos. 5648 and 5546, or to the argument of said appeals, or to the decision rendered by the Court on said appeals, or to the Petition for Rehearing filed therein, or to the decision thereon."

I have no memoranda, reports, data, drafts of opinion, correspondence, diaries or writings called for by paragraph 8 of the subpoena except my conference memoranda, which I have already sent to the Special Master, and that is in your possession, I assume,— 3122

The Master: Yes.

The Witness: —Mr. White.

The Master: That is right, it has been shown to counsel.

The Witness: Paragraph 9 calls for:

"The agreement, or agreements,—or copies thereof if the originals are not in your possession —by and between J. Warren Davis and certain of his creditors, or by and between said creditors and any trustee or assignee for the benefit of said creditors of J. Warren Davis, entered into in the year 1937, compromising and settling certain of the debts and obligations of J. Warren Davis, together with any schedule of assets and liabilities prepared in connection therewith; now in your custody, and all other deeds, evidences, and writings which you have in your custody or power concerning the premises, and for failure to attend, you will be deemed guilty of a contempt of court, and liable to pay all loss and damage sustained 3123

thereby to the party aggrieved, and forfeit Two Hundred and Fifty Dollars ($250.00) in addition thereto."

I have the copy of assignment in reply to that paragraph 9 of the subpoena, all of my life insurance policies to Samuel Ungerleider—and by "copy" I mean photostatic copy—copies of three notes, photostatic copies, one for $25,000, one for $9,250, and one for $3,424.50, and copies of three checks in the same amounts, and twenty-three letters, in return to para-
3125 graph 9 of the subpoena.

I guess I better begin to distribute these, Mr. Neuman.

And I have no folder, Mr. Thiess, for the paragraphs in which I have nothing.

Mr. Thiess: That is all right, it is very nice that there are any folders.

By Mr. Thiess:

Q. Judge Davis, does this folder number 9 contain the Ungerleider settlement agreement or does it just contain the assignment of the—. A. Just what do you mean by settle-
3126 ment agreement, Mr. Thiess?

Q. The settlement agreement that you made with the banks. Was there any agreement of that type? A. I think there was no agreement.

Q. Yes. A. At least, no written agreement that I know of. There was doubtless an oral agreement entered into between Mr. Ungerleider and the banks as they discussed the matter. At the time he was discussing most of this I was in the hospital very sick, and all that I know was that he was to pay them the amounts stipulated and they were to surrender unto him the notes which I had signed.

Q. Now, this document that I now show you is a photostatic copy of the agreement made—. A. Of the assignment?

Q. Of the assignment signed by yourself and Mrs. Davis, —A. That is right.

Q. —is it not? A. That is right.

Mr. Harris: Of what? See, I don't know what this is.

The Witness: All of the insurance policies which I had, the face amount of which was, I think, forty-three thousand and some dollars.

By Mr. Harris:

3128

Q. To Mr. Ungerleider? A. To Samuel Ungerleider.

Mr. Harris: Well, what are you going to do with it?

Mr. Thiess: Well, just a minute.

Mr. Harris: Better mark it when you ask a question about it.

Mr. Thiess: Just a minute.

Mr. Harris: So we know what you are talking about.

Mr. Thiess: Just a minute, I will take care of it.

The Witness: May I say this, Mr. Harris, in reply to your question? I hope when Mr. Thiess is through —when you ask him what he is going to do with it— 3129
that he will return it to me.

Mr. Thiess: That is why I put it back in your folder. I was going to show you another photostatic copy and ask you whether that is not the same agreement.

Mr. Harris: Well, not having marked the first one, we will not know.

Mr. Thiess: All right, well, you can look at the first one and compare it, if you so desire, if you are going to be meticulous.

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Mr. Harris: I am not meticulous, but I never heard of anybody asking people to identify papers and then putting them back in the folder without putting some identifying mark on them.

The Witness: So far as I know, Mr. Thiess, so far as I can—yes, it is. Anyway, that is the one sent me by Mr. Ungerleider.

(The witness referred to the photosta. that had been shown to him.)

Mr. Thiess: And we got that one from Mr. Ungerleider, so I presume it is the same.

3131

The Witness: I presume so.

Mr. Harris: Are you going to mark that, Mr. Thiess?

Mr. Thiess: I will mark the one——

Mr. Harris: Which you produced?

Mr. Thiess: Yes.

Mr. Harris: And you will furnish us with a copy of it, please.

Mr. Thiess: We will.

The Master: How was it marked? I didn't hear.

Mr. O'Mara: Do you want to see it, Mr. White?

3132

The Master: I will look at the other.

Mr. O'Mara: All-right.

Mr. Thiess: I would like to introduce this agreement in evidence as Amici Exhibit 95.

Mr. O'Mara: You mean assignment, Mr. Thiess?

Mr. Thiess: Yes, it is an assignment.

Mr. O'Mara: You said agreement.

Mr. Thiess: Now, could I see that assignment just one moment?

(Photostatic copy of assignment dated July 28, 1937, from J. Warren Davis and Marguerite G.

Davis to Samuel Ungerleider was marked Amici Exhibit 95.)

The Witness: I think perhaps for—in accordance with the facts, Mr. Thiess, I should state this, that when Mr. Ungerleider was compromising these obligations I was very ill with prostate trouble. Thinking that my trouble was malignant, he came to see me one day out to my home, having learned that I was ill, when he was visiting his nephew, who was my physician in Trenton, at which time Judge Buffington and Judge Biggs were also visiting me, and I gave him 3134
either then or sometime before I went to the hospital just a memorandum, general memorandum, a general assignment, assigning all my life insurance policies to Samuel Ungerleider, and then when I recovered, why, I wrote out this assignment which you have offered in evidence, and we tore up the other one, setting forth each policy and the amount for which the insurance was given.

By Mr. Thiess:

Q. Now, Judge Davis, were you indebted to any other banks which are not recited in this assignment? A. I had 3135
some obligations in the Salem National Bank, Pennsgrove National Bank, and the Peoples Bank of Pennsgrove. Those obligations were small, to begin with, somewhere between one and two thousand dollars, and I had been paying off on those from time to time, and whether there was any residue left in them at that time or not I am not able to say, but if so, none to any extent.

Q. Well, did you make or did Mr. Ungerleider make to your knowlgdge any arrangements with these other banks so that this settlement could be made with these three banks? A. I think not, and whether or not anything was due them at that time I am not now able to say.

Q. As I understand your testimony, Mr. Ungerleider arranged for the settlement with the three banks referred to in the assignment? A. Yes.

Q. And am I correct in stating that this settlement was made on the basis of fifty cents on the dollar for the amount owing over the value of the collateral? A. That is my understanding.

Q. Now, this conversation that you spoke about, when you saw Mr. Ungerleider, that occurred in Trenton, did it? A. At my home in Lawrenceville.

Q. Lawrenceville? A. Yes.

3137 Q. Now, at the time—— A. But I do not think, upon reflection, that this general assignment was made at that time, but was made later on, when he was negotiating with the banks, or when he had made this settlement, I forget which, but, anyway, before I came out of the hospital.

Q. Now, I am correct, am I not, in stating that at the time that Mr. Ungerleider arranged for this compromise settlement you were indebted to him? A. Well, yes and no.

Q. Well, what do you mean by that, Judge Davis? A. I will explain. I assume, Mr. Thiess, that you are referring to an old stock account which he opened for me.

Q. I am referring to that, and also the four thousand
3138 dollar advance that he made to you. A. Yes, my answer is yes, as to the four thousand dollars.

Q. Well, now, with respect to the stock account? A. There was an old stock account which Mr. Ungerleider opened for me, and I think it was the first, probably, stocks I had, or that were bought in my name or for me. I met him one day, and he said, "I have opened", or, "I am going to open"—I do not recall which—" an account for you and think I can make you some money"—a stock account.

I said, "All right, that is very good for you to do that, but my situation is such that I cannot pay any losses."

And he said, "All right, there will be no losses, and I do not expect you to pay any losses", and so that account went on until the crash came, and in the crash there was a loss and he paid it.

Q. That loss was about $9,777? A. Nine thousand and something.

Q. And Mr. Ungerleider paid that? A. That is my understanding.

Q. And did he ever ask you for anything on that account, to pay for—— A. I don't know whether he did or not, but I think some members of the corporation perhaps did.

3140

Q. Yes. A. And, I don't think Mr. Ungerleider did, because he knew the understanding with which that account started.

Q. Well, have you any recollection of others in his firm that talked to you about it? A. No, I think nobody ever talked to me about it.

Q. Yes. A. I think someone wrote to me about it, but——

Q. And what was your position at that time? A. My position was that I had an agreement with Mr. Ungerleider when he opened the account for me that I was not to bear any losses, should there be any losses.

Q. And,—— A. And he stood by that agreement.

3141

Q. Now, then, there was this other amount owing to Mr. Ungerleider? A. Four thousand dollars.

Q. Four thousand? A. Yes.

Q. Now, was it your purpose when you assigned this assignment agreement, when you made this assignment agreement with Mr. Ungerleider, to cover in that the four thousand dollars which you owed him? A. My purpose was to cover any indebtedness, any and all indebtedness that——

Mr. Harris: Just a minute, I object to that. I think the paper speaks for itself.

The Master: Yes, I think it does.

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Mr. Thiess: All right.

Mr. Harris: And I move to strike out the answer.

The Master: Let it be stricken out.

By Mr. Thiess:

Q. Now, as I understand it, you borrowed thirty-seven thousand, five hundred on your insurance policies to make this compromise agreement, is that correct? A. Well, I do not know whether or not you would call it borrowing, I suppose that is the right term; Mr. Ungerleider paid that amount——

43 Q. Paid it? A. —over to the banks.

Q. And as I understand it, Judge Davis, you borrowed, or, you, rather, I will put it this way, if you didn't like the way I expressed it, you gave Samuel Ungerleider a note in the amount of $9,250, payable on demand, and another note of $3,424.50, payable on demand, is that correct. A. I think that is the amount. You have photostatic copies of those notes there.

Q. I show you photostatic copies of the two notes and of a check in the amount of $9,250, payable to the Chemical Bank and Trust Company, signed by Samuel Ungerleider, and a check of $3,424.50, signed by Samuel Ungerleider.

44 Mr. Harris: To the order of——

Mr. Thiess: To the order of the Chemical Bank and Trust Company.

By Mr. Thiess:

Q. Do you recognize those documents? A. I recognize the notes that bear my signature, and the checks I recognize as Mr. Ungerleider's, because I know his handwriting, and his name is signed to these checks.

Mr. Thiess: Any objection to putting those in evidence?

Mr. Harris: What is the——

Mr. Thiess: I mean, the checks.

Mr. Harris: In connection with what are these offered, Mr. Thiess?

Mr. Thiess: These are the checks——

Mr. Harris: Part of the settlements——

Mr. Thiess: Part of the settlements.

Mr. Harris: —that were made on behalf of Judge Davis——

Mr. Thiess: Yes.

Mr. Harris: —by Mr. Ungerleider?

Mr. Thiess: By Mr. Ungerleider, yes.

3146

Mr. Harris: Haven't you got all of them, the aggregate?

Mr. Thiess: I am coming to the next——

Mr. Harris: That aggregate thirty-seven thousand dollars?

Mr. Thiess: I am coming to the next one as soon as we get through with these.

Mr. von Holst: You offer them?

Mr. Thiess: Yes, I offer them. I asked whether there is any objection.

Mr. Harris: Well, I object to all of them.

Mr. Thiess: I mean on the check, at the present time,——

3147

Mr. Harris: I don't offer any objection as to the competency of the proof, which I suppose is what you have in mind.

The Master: Better number them, had you not?

Mr. Thiess: I will, and I would like to offer in evidence as Amici Exhibit 96 the note for $9,250.00, and as 96A the check for $9,250.00, payable to the Chemical Bank and Trust Company.

Mr. Harris: I suppose in God's own sweet time we will get copies. It seems to me when you were making copies you might have made extra copies for

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other counsel. We attempt to do that. It would greatly expedite the hearing, you know, if when counsel come in with exhibits they propose to offer, they have copies for the Master and for us, too. We will undertake to do the same.

Mr. Thiess: We will try to do that. And I offer in evidence as Amici Exhibit 97 the note signed by J. Warren Davis in the amount of $3,424.50, and as 97A the check in the same amount to the Chemical Bank and Trust Company.

3149 Mr. Harris: By Mr. Ungerleider?

Mr. Thiess: By Mr. Ungerleider.

(Photostatic copy of note dated May 14, 1937, for $9,250.00, from J. Warren Davis, to the order of Samuel Ungerleider, was marked Amici Exhibit 96.)

(Photostatic copy of check dated May 14, 1937, for $9,250.00, from Samuel Ungerleider to the order of the Swedesboro National Bank was marked Amici Exhibit 96A.)

3150 (Photostatic copy of note dated May 14, 1937, for $3,424.50, from J. Warren Davis to the order of Samuel Ungerleider, was marked Amici Exhibit 97.)

(Photostatic copy of check dated May 14, 1937, for $3,424.50, from Samuel Ungerleider to the order of the Swedesboro Trust Company was marked Amici Exhibit 97A.)

By Mr. Thiess:

Q. Now, I now call your attention to a document, a note signed by you in the amount of $25,000.00, dated April

30, 1937, a one year note, payable to Arthur Ungerleider, and ask you whether you recognize that document.

(The witness examined the document.)

A. Yes, that is signed by me. I should say, perhaps, I didn't know Arthur Ungerleider in the transaction. It was all done by Mr. Samuel Ungerleider. He is Mr. Samuel Ungerleider's nephew.

By Mr. Thiess:

Q. Is this his nephew or his brother? A. His nephew, as 3152
I understand it, Mr. Thiess.

Q. Well, did his nephew loan these twenty-five thousand dollars? A. Well, all that I know is that I signed this note through Mr. Ungerleider.

By Mr. Harris:

Q. Do I understand also, Judge Davis—if I may interpolate—that this twenty-five thousand dollars represented the remainder of the settlement with your creditors which Mr. Ungerleider made for your account? A. Yes, that went to the Trenton Banking Company.

Q. Does that include those Swedesboro—— A. No, the 3153
other two checks include the Swedesboro banks.

Q. The ones payable to the Chemical Bank?

Mr. Thiess: That is right.

Mr. Harris: Oh, yes.

By Mr. Thiess:

Q. Did you ever see, or do you recognize this check drawn by Emil J. Roth and Company and endorsed by Arthur Ungerleider, in the amount of $25,000.00?

(The witness examined the check.)

3154 *J. Warren Davis—For Amici Curiae—Direct*

A. No, I never saw the check and I do not know Emil J. Roth's signature.

By Mr. Harris:

Q. Well, do you know Arthur Ungerleider's signature?

By Mr. Thiess:

Q. Do you know Arthur Ungerleider's signature? A. No, I don't know his signature, either.

3155 Mr. Harris: Well, was that paid over, was that endorsed to and collected by the Trenton Banking Company?

Mr. Thiess: That is right.

Mr. Harris: Well, subject to correction we will make no question about the competency of the proof.

Mr. Thiess: All right.

By Mr. Harris:

Q. There isn't any doubt, Judge Davis, but what the sum of these three checks, on the one hand, and the sum of the 3156 three notes, on the other hand, constituted the amount that you arranged with Mr. Ungerleider to pay for your account to your banking creditors? A. The amount that he arranged with the banks to pay for me?

Q. Yes, sir, well, I mean, you made the arrangement with him to take—to make an arrangement with the banks to settle the account? A. Well, he made the arrangement with banks and then told me about the arrangement.

Q. In any event, you adopted it, ratified it? A. Sure.

Q. And that was the amount that you mentioned as the indebtedness, in the assignment—— A. That is right.

Q. —of the life insurance policies? A. That is right, these three checks and these three notes covered the entire transaction of the settlement.

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 98 the J. Warren Davis note of $25,000.00 dated April 30, 1937, and as 98A the $25,000.00 check under the same date, signed by Emil J. Roth and Company and endorsed by Arthur Ungerleider.

Mr. McCullough: You offer those as one exhibit?

Mr. Thiess: 98 and 98A. 3158

(Photostatic copy of note dated April 30, 1937, for $25,000.00, from J. Warren Davis, to the order of Arthur Ungerleider, was marked Amici Exhibit 98.)

(Photostatic copy of check dated April 30, 1937, for $25,000.00, from Emil J. Roth and Company to the order of Arthur Ungerleider, was marked Amici Exhibit 98A.

By Mr. Thiess:

Q. I gather from what you have just said, Judge Davis, that you did not give Mr. Arthur Ungerleider any security for his loan except as that security may be expressed in the agreement that you had with Samuel Ungerleider? 3159

Mr. Harris: Of which copy is Exhibit——

Mr. Thiess: Is Exhibit—I have forgotten what it is——

Mr. O'Mara: 95.

Mr. Thiess: 95.

The Witness: Represented by the assignment of the life insurance policies.

3160 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Thiess: That is right.

The Witness: Yes, that is right.

By Mr. Thiess:

Q. Now, do you know or have you any knowledge why the note to Arthur Ungerleider was made a one-year note, and the note to Samuel Ungerleider was made a demand note? A. No, I do not.

Q. Did you know at the time or recognize at the time that those notes were written in that sort of a way? A. I
3161 don't think I did. I think the first time that it was called to my attention was that when Mr. Ungerleider had lost or misplaced these notes and then he called to my attention that that was the thought and asked me to sign other notes, and I signed notes marked duplicates, and I think you will find the photostatic copies of the notes which I have given you are marked duplicates, and then the note for one year to Mr. Arthur Ungerleider was changed from one year to a demand note, just the same as the other two.

Mr. Harris: The only advantage, as I see it, is that the one-year note, as I see it, gave him a seven-year statute of limitations, instead of six years.

3162

By Mr. Thiess:

Q. Well, I was just looking at the note that you produced a photostatic copy of, and I notice that that is still a one-year note. A. Well, I presume that is the original, then. He perhaps found the original.

Q. I see. Well, this came out of your file. A. Did it? Well, I think you will find the other two, then, are duplicates. See if you don't find them marked duplicates.

Mr. Thiess: Give it to Judge Davis. Maybe he can find it. This is the folder, Judge Davis.

The Witness: Yes, here they are (indicating.)

Mr. Thiess: I don't believe it makes any material difference.

The Witness: I don't think it makes any difference. We are wasting time.

Mr. Thiess: We are wasting time on it, that is right.

By Mr. Thiess:

Q. Have you any knowledge at the present time of what was the net cash surrender value of the policies that you assigned to Mr. Samuel Ungerleider? A. At that time? 3164

Q. As security for your indebtedness—at that time. A. No, I have not.

Q. Do you know if any loans had been made on these insurance policies prior to the time that you assigned them to Mr. Ungerleider? A. No, sir, no, sir.

Q. There were no loans, or did you know whether there were any loans made? A. Not to my knowledge. I think there were none.

Q. Did you agree to pay any interest to Messrs. Samuel and Arthur Ungerleider on that loan? A. It was never mentioned.

Q. You never paid any? A. All the payments I have 3165 made are contained in the statement which I here submitted to you.

Q. Well, as a matter of your recollection, do you know whether you paid any interest? A. Well, I have paid just what I have set forth in these statements, and whether he allocated it to principal or interest, I do not know.

Mr. Harris: Here it is, right here.

The Witness: Oh, you have got it over there.

Mr. Harris: It looks like twenty-five thousand dollars. By the way, I should observe that all of the

checks—that not all of the checks representing the payments shown on the schedule are produced.

The Witness: Those are all that I have. I think the first——

Mr. Harris: The large payments are not shown.

The Witness: I think the first three or four payments were in cash.

Mr. Thiess: That is what it says, in cash.

Mr. Harris: The big ones aren't there.

The Witness: Well, that is due to this fact, that Mr. Ungerleider at the time of those payments and

3167 at the present time was carrying an account for Mrs. Davis and he sold some stock and we told him to apply that on the indebtedness of Mrs. Davis to him, and he sent a check which she signed payable to him, and so the check when it was cashed would go back to him.

Mr. Harris: I assume that large payment of eleven thousand some odd dollars at the end was probably a loan made against some of these insurance policies that were assigned?

The Witness: No, they surrendered some of the policies.

Mr. Harris: Some of them were surrendered.

3168 *By Mr. Thiess:*

Q. This schedule that you referred to, that does not allocate whether this money was—— A. On principal or interest.

Q. —principal or interest, it doesn't allocate it. A. Doesn't allocate it, and to my knowledge it has not—so far as I know, it has not been allocated.

Q. Well,—— A. Mr. Ungerleider never said anything about it to me, nor I to him.

Q. There was no understanding between you at the time—— A. None whatever.

Q. —that any interest was to be paid? A. No, there wasn't anything said about interest at all.

Mr. Harris: What do the notes show? Nothing?

Mr. Thiess: No, nothing.

Mr. Harris: And the agreement shows nothing?

Mr. Thiess: No.

By Mr. Thiess:

Q. At the time that you made this settlement agreement what security, if any, did you give Mr. Samuel Ungerleider for the money which you had previously borrowed from and 3170
owed him personally, that was not included in the agreement? A. Do you mean the four thousand dollars?

Q. Four thousand dollars. A. I gave him nothing but this assignment, which if I had died, as I feared I was going to, at the operation, and especially if my trouble was malignant, it would have covered all that I owed him, together with the four thousand dollars.

Q. Now, to what extent, if any, have these payments or this money that you borrowed from Mr. Ungerleider been liquidated up to the present time? A. It is all set forth in this.

Q. All set forth here. Can you tell us what it was,— 3171
A. No.

Q. —from your recollection? A. I haven't added it. It is just a matter of addition.

Can we go along while he is doing things——

Q. Well, I just want to look at it. A. Yes.

Q. I would like to ask, am I correct in understanding that you have at the present time sold or cashed in your insurance policies and paid Mr. Ungerleider? A. Mr. Ungerleider did, with my agreement and consent.

Q. And when was that done? A. I think it will state that. I don't know just when it was.

3172 *J. Warren Davis—For Amici Curiae—Direct*

Q. And—— A. This year, early this year or latter part of last year.

Q. It says here May 18, 1942, on this schedule. Is that the time it was done? A. Well, I assume that is correct.

Mr. Harris: May I see that agreement, the assignment of the insurance policies?

May I just mak inquiry?

Mr. Thiess: All right.

By Mr. Harris:

3173

Q. Were all of the Equitable life insurance policies surrendered? A. Yes,—oh, by Mr. Ungerleider.

Q. By Mr. Ungerleider? A. I think there was one that was not surrendered.

Q. And there was one written by the Northwestern? A. Yes, I think that was not surrendered.

Q. But all the Equitable policies were surrendered? A. Yes.

Q. So that leaves five thousand dollars of insurance—— A. Still——

Q. —in effect on your life? A. Still in effect, which Mr. Ungerleider holds.

3174

By Mr. Thiess:

Q. Now, this schedule which you have shown me, Judge Davis, foots up approximately $24,561.70. Now, were all these payments made to Samuel Ungerleider? A. Yes.

Q. Well, as I understand it from your testimony, the two notes which you gave to Samuel Ungerleider, plus the four thousand dollars which you owed him, would be less than the $24,561, wouldn't it? A. Yes.

Q. Well, now, can you state why you paid this additional money to him? A. I didn't——

Q. To Arthur Ungerleider. A. I didn't know Arthur Ungerleider in the transaction, and everything Arthur Ungerleider has or is is due to his uncle.

Q. And this Mr. Arthur Ungerleider that you referred to, the nephew of Mr. Samuel Ungerleider, —— A. That is my understanding.

Q. —was he employed by Mr. Samuel Ungerleider in his brokerage concern, do you know? A. I think he was at one time, but whether he was employed at this time or not, I do not know. I am inclined to think that he was connected in some way with another nephew of Mr. Ungerleider's, by the name of Emil Roth. 3176

Q. Is this Arthur Ungerleider, the nephew of Mr. Samuel Ungerleider, that you referred to, an accountant? A. I don't know.

By Mr. Harris:

Q. In any event, you understood that anything in excess, that these payments were to be ratably distributed between the notes you gave to Samuel Ungerleider and the note you gave to Arthur Ungerleider? A. No question about that. I think, Mr. Thiess, that Mr. Ungerleider has two nephews by the name of Arthur, I think he does. 3177

By Mr. Thiess:

Q. And you don't know which one of the two nephews this Arthur Ungerleider is? A. I don't know which one.

Q. At the time that you received this money from Mr. Ungerleider and made the settlement with the banks, what assets, if any, did you and your wife have other than your life insurance? A. We had some money in safe deposit boxes, and Mrs. Davis had a farm in South Jersey.

Q. That farm would be worth how much? A. Well, it wasn't worth the mortgage that was against it.

Q. Well, how much was the equity in it?

3178 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Harris: He says none.

A. There was a mortgage of $7,500 held by the Trenton Banking Company.

By Mr. Thiess:

Q. I see. A. Which the bank sold for five thousand dollars.

Q. Do you remember that your wife had this option on a thousand shares of Columbia Broadcasting stock? A. I do
3179 know it now. I did not know it at that time.

Q. And that option was worth about thirty thousand dollars at that time? A. I do not know what it was worth at that time. When she exercised it I think it was worth twenty-nine thousand and something.

Q. And you have no knowledge at the present time of what it was worth at that time? A. No.

Q. At the time you made the settlement? A. I didn't know what it was worth then, because I didn't know of the option at that time.

Q. And do you know how your wife got this option? A. I know by hearsay how she got it.

Q. When did you first hear about your wife having this
3180 option on this one thousand shares of——

Mr. Harris: Well, I think we are going a little far afield, if the Judge has no personal knowledge and this is all hearsay.

Mr. Thiess: Well, he has personal knowledge. He said he didn't at the time. I am asking——

The Witness: Well, I didn't have hearsay knowledge at the time. All my knowledge is hearsay,——

Mr. Harris: He didn't have hearsay at the time.

The Witness: —but I think there is no question about it.

By Mr. Thiess:

Q. You know your wife did have this option on this thousand shares of Columbia Broadcasting stock? A. Only what I have been told. I do not think that—I was going to say I do not think I have seen the option, but I think I have seen the option.

Q. Well, you know, do you not, that the option was exercised—— A. Yes, I do.

Q. —at some later time? A. Yes, I do.

Q. And when did you first learn that your wife had this option? A. Just before it was exercised. 3182

Mr. Harris: When was that, Mr. Thiess?

The Witness: That was in September, as I recall it, 1937.

By Mr. Thiess:

Q. And at that time the option was worth how much? A. When she exercised it?

Q. Yes. A. I think around twenty-nine thousand dollars.

Q. And don't you know that she got this option from a Mr. Levy? A. Yes. 3183

By Mr. Harris:

Q. You now know it, you mean? A. Yes, he asked if I now know it.

By Mr. Thiess:

Q. And Mr. Levy was counsel of record in the case of George versus Victor Talking Machine, which was appealed to the Circuit Court of Appeals of the Third Circuit, that is right, is it not? A. Yes, and disposed of a year before.

3184 *J. Warren Davis—For Amici Curiae—Direct*

Q. Well, it came on later on, again, didn't it, Judge Davis? A. It came on later on, on some motion, and I was on the bench and left the bench and didn't sit in it.

Q. And at the time that you left the bench two of your relatives were of counsel for the parties in that case, were they not? A. No, one relative I had was of counsel in the Supreme Court, but he wasn't before us.

Q. Well, he was—— A. Not before our court.

Q. Well, he was of counsel in this case, was he not? A. After, after it left our court and went to the Supreme Court
3185 I understood he was secured by the Richmond counsel, Richmond, Virginia, to argue the case in the Supreme Court.

Q. Well, at the time that you left the bench was after the case came up the second time, after they had been to the Supreme Court, that is correct? A. Yes, the case actually didn't come up before us, but some question, as I recall it now, as they opened up, the question was about the—either the extension of time for filing the brief, or extension of the pages which were allowed in the brief, I don't know, it was one of those, and when they opened up the subject, then I left the bench, against the protest of both counsel.

Q. You say against the protest of both counsel? A. Yes, both of them said, "We don't mind, go ahead and sit."

3186 Q. Well, at that time am I correct in understanding that your brother had been retained on one side of the case and your nephew on the other side of the case? A. Oh,——

Q. Is that correct? A. —I said only one; I have heard since that after my nephew, in Norfolk, Virginia, who argued the case in the Supreme Court, was retained, and the questions of damages were being litigated in Camden, New Jersey, that they employed my brother, so they might have local counsel where they might serve subpoenaes and things of that kind, but he never appeared in it—but at that time I did not know that my brother had any connection with it, and whether he did or not at that time, I do not know.

Q. But it was after——. A. I only know of my nephew at the time I left the bench, I knew that.

Q. But your brother had been retained prior to that time? A. Not to my knowledge, I think it was after that, but I am not sure.

Q. Don't you know now that he was retained prior to that time? A. No, I do not know when it was, he never appeared in it, never got any fee, so he has told me, and I think that is correct.

Q. Well, it came up to you on appeal, did it not, when you retired from the bench, on the accounting issue? A. No, it wasn't an appeal then, it was a question of the brief, 3188
either the extension of the time in which the brief should be filed, or the extension of the number of pages allowed under our rules by the brief, I don't know which it was. The case hadn't come up before us then.

Q. Well, when it came up—— A. On appeal?

Q. —on the accounting, on appeal, the second time, that is when you left the bench, wasn't it? A. No, no, I wasn't in it then. I think it came up after I retired, on appeal.

Q. Now, as I understand you, it is your testimony that Mrs. Davis never told you that she had this option on this thousand shares of Columbia Broadcasting stock until after this agreement with the banks was made? A. Yes, that is right. 3189

Q. And—— A. The agreement was made, I think, in March, or some time along there, and I didn't know of the option until just before she exercised it, in September of that year.

Q. And do you know whether—your wife knew that this agreement was being made, didn't she? A. I think she did.

Q. Do you know whether she told Mr. Ungerleider about this option? A. No, I do not.

Q. Do you know whether Mr. Ungerleider told the banks or any officials of the banks that you had this option, or that your wife had this option? A. Well, so far as I know

Mr. Ungerleider didn't know it. If he did, why, whether or not he told the banks I do not know.

Q. Now,— A. But the banks knew that we owned the farm in South Jersey, because the bank held the note, as the largest creditor among the banks, and they knew that we had our home. They didn't think that we were surrendering all that we had.

Q. Now, Judge Davis, how long have you known Mr. Morgan S. Kaufman? A. Fifteen or eighteen years.

Q. And— A. That is not exact, it might be a little longer, it might be a littler shorter.

3191 Q. Yes. A. But I met him in Scranton, Pennsylvania, when I was holding court up there one time for Judge Witmer, when he was alive. He was referee in bankruptcy and I was introduced to him by Judge Witmer.

Q. Well, that would bring your acquaintanceship with Morgan Kaufman back to the 1920's sometime, wouldn't it? A. Yes.

Q. In the early '20's? A. Yes, I should think it was. Fifteen or eighteen years is my best recollection, Mr. Thiess.

Q. To what extent did you personally contact him during this period?

Mr. Harris: Between which period?

3192 Mr. Thiess: During the fifteen or eighteen years that he knew him.

Mr. Harris: Oh, you mean up to date?

Mr. Thiess: Yes.

A. During the first years that I knew him I used to see him occasionally. I went up there every year, in the Middle District to hold court. When Judge Witmer was away, as he always went away, during the month of February, I was the judge assigned to take care of Judge Witmer's business, motions, would call me up there, and first one thing and another, and I would meet Mr. Kaufman occasionally when

I was up there. I visited his home about once a year, when he had parties, called lawyers' parties, judicial parties, or something, at which I met a great many of the State Judges, and Common Pleas and Supreme Court and Federal Judges.

By Mr. Thiess:

Q. That was at his summer home at Towanda? A. That was at his summer home at Towanda, Pennsylvania.

Q. Do you remember how often you went up there? A. Once a year.

Q. For how many years? A. And sometimes more than 3194 that.

Q. For how many years did you do that, Judge Davis? A. I did that up until—with more or less frequency. I wouldn't say every year, but I did that up until he began to practice. At that time he wasn't practicing and didn't practice in our court, or any other court, to my knowledge, but when he began to practice then I stopped going up there.

Q. Have you any recollection as to when he started to practice? A. I think it was around 1932 or '3, somewhere around there.

Q. And at that time— A. It might have been '32, I am not exactly sure, but I think that is the time it was.

Q. And at that time you stopped going up there? A. I 3195 stopped visiting him.

Q. Now,— A. Some other judges didn't, but I did.

Q. Now, did you have any other social contacts with him besides there— A. Only as I would meet him if I were in that vicinity, hold court, or when I would meet him here in Philadelphia, either at the Bellevue-Stratford or down in court. He was very intimate, he and his brother, with Judge Buffington. They used to come down there frequently, walked home with Judge Buffington at night, after court was over, our chambers adjoined each other and I would generally see him when he came to see Judge Buffington.

Q. Did you— A. And I stayed with Judge Buffington some nights and I would frequently see him when I would stay with Judge Buffington.

Q. Well, did you visit Mr. Kaufman at all at the Ambassador Hotel, in New York, when he was living there? A. I have called there.

Mr. Harris: During what period?

By Mr. Thiess:

Q. During what period would you see him there? A. I
3197 don't know that. It has been so many years, I don't know.

Q. Well, it was during the period that he was receiver or trustee in the estate that he was administering at that time in New York, was it not? A. Well, I don't know.

Q. Or don't you know? A. I don't know about that, Mr. Thiess.

Q. Do you know how often you would visit him at the Ambassador Hotel? A. Not very often.

Q. And you don't know what years those were? A. No, I don't.

Q. Do you know what was the occasion of any of these visits when you visited him up there? A. If I were to go up
3198 there and was in that vicinity, sometimes, I would call on him.

Q. Yes. A. I don't recall going up there specially to visit him. I was——

Q. Well, do you—— A. The occasion—you asked me about the occasion.

Q. Yes. A. The president of Bucknell University, who is now director of the National Defense of Pennsylvania, before he was president and since he was president, and while he was acting president, has an office almost adjoining the building in which Mr. Kaufman is. I would often see him when I would go up and call on the president of

Bucknell. I was a member of the Board of Trustees, in fact, Chairman of the Board of Trustees of Bucknell University, and I had business and would call and see him quite frequently, and sometimes I would see Mr. Kaufman.

Q. Well, when you went up there to see him, would you put that in 1932, '3, '4, '5 or '6? A. Well, I don't think it was as late as '36 or '5, I think it was before that, although I might have seen him at that time, I am not sure.

Q. Do you have any recollection of meeting any other people in this apartment of Mr. Morgan Kaufman in New York? 3200

Mr. Harris: Well, it was an office, wasn't it? You say apartment.

By Mr. Thiess:

Q. Well, he lived there, did he not? A. That was my understanding.

Q. Yes.

Mr. Harris: I thought he used it as an office.

Mr. Thiess: Used it as an office and lived there. It was both, I presume.

Mr. Harris: Well, he wasn't there all the time, so he couldn't have lived there. He stayed overnight there. 3201

Mr. Thiess: He actually lived there.

By Mr. Thiess:

Q. Judge Davis, isn't it your understanding that Morgan Kaufman lived in this apartment in New York? A. Well, he was there, my understanding was he was there sometimes, and sometimes he was in Pennsylvania—Philadelphia—and sometimes he was in Scranton, Pennsylvania.

3202

Q. And your—— A. As I understand it, he lived a long time at the Jermyn Hotel, at Scranton, Pennsylvania. At the same time, he visited back and forth to New York.

Q. Well, when you visited there was he not living there? Didn't he make it his home when he was in New York? A. Well, I don't know whether he would call that his home or whether he would call Scranton his home. I think his voting residence was always in Pennsylvania.

Q. Well, I mean, when you went to visit him here wasn't that the place where he slept and lived? A. He slept there, I have no doubt of that, when he was in New York.

3203

Mr. Harris: When he was in New York, yes.

The Witness: When he was in New York.

By the Master:

Q. Was that in an office building or an apartment house?

Mr. Harris: It was a hotel.

The Witness: That was a hotel.

The Master: That was a hotel?

The Witness: Yes.

The Master: Is that where the office was that he has described?

3204

Mr. Thiess: Yes, that is my understanding, at the Ambassador Hotel.

The Witness: Well, if he had an office there I do not know about that, I would not know about that, whether his office was there or not.

By Mr. Thiess:

Q. Well, Judge Davis, I don't know whether the record is exactly clear on this. Is my impression correct, did you state that you stopped going up to these parties that Mr. Kaufman gave at Towanda, Pennsylvania, when he started practicing in the Federal Court? A. That is right.

Q. In the Circuit Court of Appeals? A. That is right.

Q. Can you tell us why you stopped going up at that time? A. Well, I just did.

Q. Well, what was your mental reaction? A. Well, I thought it was just as well that I stopped going up and visiting him at those parties. It was a long ways up there, and when we would go we would stay overnight, generally on Saturday nights, we would stay over and come back Sundays.

Q. Well, I understood your answer before, that you stopped going up there because he was practicing, not because of the inconvenience that you had in going up there and back. A. I know, but that was why we stayed overnight. 3206

Q. I see. Now, you stated that you frequently visited Judge Buffington at the Bellevue-Stratford? A. That is right.

Q. And did you meet any other Federal judges in Judge Buffington's apartment? A. I think that I have met Judge Thompson in Judge Buffington's apartment, and I think I have met Judge Johnson in Judge Buffington's apartment. Those are indistinct recollections.

Q. Well, did you ever meet either David Kaufman or Morgan Kaufman in Judge Buffington's apartment when you went up to see him? A. I have seen them there. 3207

Q. Was that frequently or infrequently? A. I couldn't say that it was frequently, but—because I didn't stay overnight with him frequently. I stayed occasionally overnight with him, especially if it was cold or rainy weather or something, I wouldn't go home, that is, when I was holding court, I would go over and stay with Judge Buffington.

Q. Did you to any extent visit Mr. Morgan Kaufman in Scranton during the period 1932 to 1937, outside of these Towanda parties? A. No, no, I didn't.

Q. You have no recollection? A. No.

Mr. Harris: Well, I think he said more than that —he didn't.

The Witness: I would see him when I was up there holding court, whatever I was doing up there, and I frequently held court up there for Judge Witmer, and continued it after Judge Witmer died and when Judge Johnson was the Judge for the Middle District of Pennsylvania.

By the Master:

3209 Q. That is when you were District Judge, Judge Davis? A. Both when I was District Judge and when I was on the Circuit Court of Appeals.

By Mr. Thiess:

Q. Were there any other places that you have not mentioned thus far where you met David Kaufman and Morgan Kaufman during the period 1932 to 1937? A. No places that I recall that I met David Kaufman. I met Morgan Kaufman, I have seen him in Atlantic City, and David and Morgan Kaufman have called at my home once or twice when they were on the way from Scranton to Philadelphia.

3210 Q. Do you remember vacationing with Morgan Kaufman in Florida? A. No, sir. I saw him at the Battle Creek Sanitorium at Miami Springs. I wasn't vacationing with him. I was vacationing there for my health.

Q. Well, was he there at the time? A. He was there sometimes. I went there every year for a number of years, and one or two years he was there.

Q. That was the years 1935, '36 and '37? A. Well, it began before that, as I recall it. I don't have the exact years in mind.

Q. But you do know you were there in '35, '36 and '37? A. I probably was, but I——

Q. I mean, the records of the Miami Springs, that is, of the Battle Creek Sanitorium—— A. So state?

Q. —so state. A. If they do, I have no doubt they are correct.

Q. Now, during those three years isn't it a fact that Morgan S. Kaufman and David Kaufman and Judge Buffington were stopping at the same hotel while you were there at the Battle Creek Sanitorium? A. I do not know whether they were there for the three years or not. I went to the Battle Creek Sanitorium before any of them went there, and whether they were there for those three years 3212
or not, I do not now recall, but they were there at some of those years when I was there.

Q. In other words, as I understand you, you went to the Battle Creek Sanitorium before they had ever gone there? A. Yes.

Q. And did you recomend the Battle Creek Sanitorium to them? A. No. I told them what kind of a place it was, but I didn't recommend it.

Q. Don't you remember that Judge Buffington and David Kaufman were at the Battle Creek Sanitorium in 1934? A. They might have been.

Q. And isn't that a year before you attended, before you went to the Battle Creek—— A. No, sir. 3213

Q. —Sanitorium? A. No, sir, I went there before they did.

Q. You are positive of that? A. I am sure of that.

Q. Have you any idea—do you know when that Battle Creek Sanitorium was first opened up in Florida? A. No, I do not. The first I knew about it was when I was attending the Committee of Seventy in Miami Beach, and Dr. Kellogg was present at that meeting, and I met him. He invited me over to have dinner with him the following Sunday. I went over and had dinner with him, and then from that on I began to go there.

Q. What year was that, Judge Davis? A. I do not recall. I have been going to Florida every winter for a number of winters.

Q. And would you place that prior to 1935? A. My recollection is that it was.

Q. Let me ask you, if the records of the hotel show that David Kaufman and Judge Buffington were there the year before the first year you came there, would you still insist that you were there——

Mr. Harris: Now, just a minute,——

3215

By Mr. Thiess:

Q. —ahead of that?

Mr. Harris: Don't ask him any such question as that. I object to it. And there are no records to that effect in this case.

Mr. Neuman: We will get them.

Mr. Harris: Well, get them. That is different.

The Master: I think the records should be produced in the case. I sustain that objection.

3216 The Witness: I am perfectly willing to answer that question. I want to say, Mr. Master and Mr. Thiess, I am giving you my best recollection and my belief,——

Mr. Thiess: That is right, I understand that, Judge Davis.

The Witness: —and I want to say that that is not infallible, but it is the best I have.

By Mr. Thiess:

Q. Now, do you remember at all that while you were vacationing in Florida at the Battle Creek Sanitorium that Judge Buffington, David and Morgan Kaufman met with

you there by pre-arrangement? A. I don't remember that they met with me by pre-arrangement. I remember this—and I suppose this is what you refer to—that when I would go to Florida I would stop at Mount Dora, Florida, sometimes stop over with Charlie Stokley at his house, and sometimes at the Lakeside Inn, and I remember one time while I was there and before I had gone down to Miami Springs, why, David Kaufman sent me a telegram.

Q. Well,—— A. And I don't know what he said in the telegram.

Q. Is this the telegram that you have reference to? 3218

(A telegram was shown to the witness.)

Mr. Harris: Showing him Exhibit what?

Mr. Neuman: It is one that was marked for identification.

Mr. Harris: Showing him exhibit what for identification?

Mr. Neuman: 57 for Identification.

Mr. Harris: 57 for Identification. A. Yes, I received that telegram. What is that date?

Mr. Thiess: The telegram isn't dated, but we understand it was sent in January, '36.

The Witness: I remember the telegram. I don't 3219 remember the date.

Mr. Thiess: You don't remember the date? I offer the telegram from David to Honorable J. Warren Davis in evidence, as Amici Exhibit 99.

The Master: Is this undated, this telegram?

Mr. Thiess: Yes, it is undated.

(Photostatic copy of telegram from David to Hon. J. Warren Davis was marked Amici Exhibit 99.)

3220 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Now, Judge Davis, you are quite certain that you spent 1935, '36 and 37 at the Battle Creek Sanitorium? A. Well, I am not dead sure about that.

Mr. Harris: I couldn't hear you, Mr. Thiess. I couldn't hear the question.

Mr. Thiess: I asked him whether he was sure that he spent the years 1935, '36 and '37 at the Battle Creek Sanitorium.

3221 The Witness: As you put that, I will say no, because when I went sometimes I spent four or five days. I didn't spend a year there.

Mr. Thiess: Well, I didn't mean that.

The Witness: Well, I knew you didn't mean it, but that is what you said, spent the years there.

By Mr. Thiess:

Q. I will put the question—are you sure that you spent your winter vacation during the years 1935, '6 and '7 at the Battle Creek Sanitorium? A. Yes, I am sure that I did not, because I never spent any winter vacation there, I only spent a short period there during those—in years that I was
3222 there, and what years I was there I cannot now for my life tell you. Their records, if you have them, are doubtless true.

Q. Well, we have got the records to show that you were there in 1935, '36 and '37. A. That might be true, I thought it was true, but I am not sure.

Q. Now, to divert just a moment, I want to refer again to this schedule of payments by yourself to Mr. Ungerleider,—— A. Yes.

Q. —which you produced. I notice that the payments in 1938, from May to October, as here enumerated, which are in the amount of six hundred dollars, one hundred dollars

each payment, were made in cash. That is correct, is it not? A. That is right.

Q. And after that all the payments were made by check? A. Yes.

Q. Do you know why it was that you changed the method of payment from cash to check as of November 26th? A. Of what date?

Q. 1938. A. Yes.

Q. Could you state why? A. Mr. Ungerleider said he thought we ought to do it so there would be a record of it.

Q. And from then on you paid by check? A. That is right. 3224

Q. And did you do this because of the investigation that had been started? A. I don't think it had been started at that time, Mr. Thiess, in '38.

Q. Do you know what prompted the idea of changing from cash to check?

Mr. Harris: You mean what prompted Mr. Ungerleider?

Mr. Thiess: No, prompted Judge Davis.

Mr. Harris: He said Ungerleider suggested he do it.

Mr. Thiess: Well, Judge Davis concurred in the suggestion. 3225

By Mr. Thiess:

Q. Do you know why? A. I acquiesced in the suggestion, yes.

Q. Was there anything said at that time? Can you give us the substance of the conversation? A. I don't think there was anything said. He said he thought there ought to be a record of the payments, and that would be a record, and so I acquiesced.

Q. At the time he didn't say why? A. Only that there ought to be a record of these payments.

Q. That is all he said? A. Yes.

Q. Now, referring to the year 1935, in that year isn't it a fact that the argument on appeal in the Root case was held in Philadelphia on the 7th day of January? Do you remember that? A. It was held in Philadelphia, I do not know the date.

Q. Have you got the——

Mr. Harris: Well, doesn't the report, the printed report,——

Mr. Thiess: Shows that.

3227 Mr. Harris: ——show that?

The Witness: I think there is no question about it, Mr. Thiess. It was held in Philadelphia, and on the date that the record showed.

Mr. Thiess: All right.

The Witness: But what that date was I do not know. I think there is no question about that.

Mr. Thiess: All right, let's get the docket sheet and we will put it in.

Mr. Harris: Well, if you would say it was on January 7, 1935, we will make no issue of that. That is generally in accordance with my recollection.

3228 The Master: Yes.

Mr. Thiess: Well, we can put in the docket sheet.

The Witness: I think there is no question about it.

By Mr. Thiess:

Q. And the Court sitting were Judges Buffington, Thompson and yourself, is that correct? A. Yes, that is my recollection.

Q. Now, at the time that you had this case under advisement did you discuss it with your law clerk, Mr. Lord? A. My recollection is that I did. I think I discussed it with him. I have, however, no distinct recollection of discussing

that or any other case, but my practice was to discuss the cases with him, if it was a case of any consequence.

Q. And do you remember discussing this particular case with him? A. No, I do not remember discussing with him, but if you would ask me to guess, I would say yes.

Q. And do you remember at this time, Judge Davis, that one of the major issues in this case was the meaning of the word "vaporization"? A. I remember that "vaporization" and "liberation"—I haven't read that opinion since 1935, but I remember that much about it.

Q. Well,—— A. And I remember the refluxes coming in 3230
the entrance of the tubes, and all of that, and dirty oil and clean oil, but the thing in detail I do not remember, because I haven't seen it in—that is seven years.

Q. Well, do you remember that when this question of the meaning of vaporization came up at the argument you suggested to counsel that because of this single issue it would be unnecessary to read this large record? Have you any recollection of that? A. I don't remember that at all, and I hope you will not hold me responsible for everything——

Q. No. A. For everything I have said to counsel.

Q. I am just wondering whether you remember that. A. No, I have no recollection.

3231

Q. You have no recollection whatsoever of anything that was said at that argument? A. No, I haven't.

Mr. Harris: He probably recalls who argued the case.

Mr. Thiess: Well, I am asking as to what occurred.

The Witness: I know who argued the case,——

Mr. Thiess: Yes.

The Witness: —but I have no recollection of what they said.

By Mr. Thiess:

Q. Do you remember who argued the case, you say? A. I think I do.

Q. Oh. A. Because there was rather a distinguished gentleman on the one side and a distinguished lawyer in New Jersey on the other side.

Q. And—— A. That was the first time, if I am correct, Judge Denison argued the case, for the side which you are representing.

Q. That is right. A. And it was the first time that I had
3233 ever seen Judge Denison. I had read his opinions and heard of him, so I naturally would remember his appearing.

By the Master:

Q. And who argued on the other side? A. Judge Haight.

Q. Just those two? A. That is my recollection.

Q. Yes. A. Did anybody else argue?

Mr. Thiess: Yes.

The Witness: You argued?

Mr. Thiess: Yes, didn't make much impression, and Mr. Hall, Mr. Hall, and I think Judge Morris said a few words.

The Witness: Well, I have to apologize to you
3234 gentlemen, because I thought Judge Denison and Judge Haight alone argued it.

(Discussion off the record.)

By Mr. Thiess:

Q. Well, there were two very important statements made, and I want to ask you—as I remember it—whether you remember them. Do you remember that at the argument Judge Buffington referred to the word "vaporization" as a term of the art, and that he posed the question to Mr. Hall, plaintiff's counsel, substantially as follows: When ice melts when is the water generated and when is it liberated? A. No, I

do not remember that. If you have ever argued many cases before Judge Buffington you know he talked a great deal, and not all of his talk stuck, but I do not remember that. I don't remember anything any counsel said.

Q. And do you remember Judge Buffington stating to Judge Haight at the close of the argument substantially as follows: It has broken my heart more than once to hold a meritorious invention not infringed because of the limitation voluntarily inserted in the claims? A. No, I never—I don't remember that.

Q. Following the argument, do you remember at all whether you saw Judge Haight? A. No, sir. 3236

Q. Do you remember whether Judge Haight saw Judge Buffington? A. If he did, it wasn't to my knowledge.

Mr. Harris: Well, you might ask about Judge Denison, too.

By Mr. Thiess:

Q. Did you see Judge Denison?

Mr. Harris: Go ahead.

The Witness: You don't want me to say that.

Mr. Harris: We certainly do.

Mr. Thiess: Go ahead. 3237

The Witness: Perhaps you know better than I.

Mr. Harris: Well, go ahead, sir, I think you should tell this.

The Witness: If Judge Denison were alive I wouldn't hesitate.

Mr. Thiess: Well, whatever you know, go ahead and tell.

Mr. Harris: Now, Mr. Hall has made some remarks about that already on the record, so I think you would feel free to go ahead. I am sure the Master is very anxious to hear this.

The Witness: My information is—now, I hesitate—my information is that Judge Denison arrived in Philadelphia the day before the argument was to take place, the next morning, that he had dinner with Judge Buffington, that he slept in Judge Buffington's room on a twin bed, with Judge Buffington, that night, and that they had breakfast together the next morning. That is my information.

By Mr. Thiess:

3239 Q. Well, where did you get this information? A. I got part of it from Judge Buffington.

Q. That is hearsay, then, as far as you are concerned? A. I didn't see him, no, I didn't see him, I said that was my information. I didn't see him because I wasn't there. I didn't see Judge Denison until he came into court, and I didn't see Judge Haight until he came into court and I didn't see either of them after they came into court and nobody ever spoke to me about the case afterwards.

Q. Now, as I understood it, you said part of your information came from Judge Buffington. Where did the other part come from? A. I don't recall whether all of it came—I know Judge Buffington spoke to me about it, about

3240 Denison.

Q. Did anybody else speak to you about it? A. I don't recall. I know that I got at least part of my information from him, I might have gotten all of it, but that is my information, and I think there is no question about the fact.

Q. Well,— A. You perhaps know whether he did or not, if you were here with him.

Q. I know nothing about it. My information is to the contrary. He was with us. A. Did he sleep with you that night?

Q. No, but he had a room— A. Well, that is my information.

Q. He had a room which was right next to ours. A. Yes, well, I don't know. Did he have dinner with you that night, before?

Q. I don't remember that. I couldn't say at the present. Could you— A. I am making no point of that. I don't think he corrupted Judge Buffington.

Q. Could you isolate the part of the statement that you have made that you attribute to Judge Buffington? A. I think Judge Buffington told me that he and Denison had dinner together that night.

Q. Now, nothing further? A. I am not sure about that. 3242

Q. Well, where did you get the other information, about sleeping? A. Well, I can't recall, I know I have it in my mind that he did and that somebody had told me, but whether it was so or not I do not know, and who it was that told me I don't know.

Q. And the thing that Judge Buffington told you was that he had dinner with Judge Denison? A. That is my recollection. Now, he may have told me more, but I do not recall. But I want it understood right here, Mr. Master and gentlemen, I don't think Judge Denison corrupted Judge Buffington, and I don't think he attempted to corrupt Judge Buffington. They were good friends and warm admirers.

Q. Now,— A. And unless you had forced that out I 3243 never would have said that.

Q. Well, when this subject was opened up I wanted to put it of record. Now, were any conferences held by the Circuit Court of Appeals of the Third Circuit with respect to the Root case after the argument? A. Yes, sir.

Q. And do you know when those conferences were held? A. I only know from our general custom. The custom of the Court was to hear arguments beginning the first Monday of each month, for two weeks, and after those were held, then we went to our chambers and studied the briefs and the records, and came back the first Monday of the next month, and we used that Monday in conferences on the cases

which we had heard the previous month, but in the meantime it was our custom, invariable custom, not to—for any judge to speak to the other judge about the case after he left the bench.

Q. Then according to your custom the first conference on this case would have been held sometime in February of 19— A. The first Monday in February of the year in which it was argued, and in the meantime no judge—and I don't think that that was ever violated, to my judgment, that unwritten rule, that no judge spoke to any other judge about the case, or to anyone, after that until we came into con-
3245 ference, and then Judge Buffington presided and he would call upon the junior judge to give his statement as to the facts and questions involved, and the law, and then no judge said anything while that was going on.

Q. And in this case that would have been Judge Thompson? A. That would have been Judge Thompson.

Q. Yes. A. And then the next judge in seniority took it up, and while he was speaking neither judge said anything.

Q. That would have been you? A. That would have been I, and then Judge Buffington sat down in the lap of one or the other, he agreed or disagreed with the others, and then it was thrown open for general conference, and nobody
3246 —no judge had any knowledge or idea, unless he gathered it from questions that were asked at the bench, or something of that kind,—you often get a slant of what a judge is thinking about when he asks questions, you may be right or wrong, but he has no idea of what any one of the other judges who sat with him—what conclusion he had reached, until he expressed that in conference.

Q. Now, I call your attention to a document which, as I understand it, are your conference notes which you received, which you have sent to the Master of this Root case, is that correct?

(The paper was shown to the witness.)

A. That is right. I left all the memoranda on it that I had made at the argument—I mean, at the conference.

By Mr. Thiess:

Q. And can you explain—this is your handwriting?—what the pencil writing on this document means? A. Well, I can explain some of it. Now, perhaps some of it has——

Q. Well, if you will just read—— A. —has gone from me.

Q. If you will just read what those pencil notes are,— 3248
A. You mean on the side here?

Q. Yes, and this up here (indicating). A. The first, up here, is "A", that means affirmed, and following is a dash, and "D" and "T". That means Davis and Thompson are for affirmance.

Below that is the letter "R", and following it is "B", that means reverse, and Judge Buffington was for reverse.

Q. That was at the conference? A. That was at the conference we held.

The number 1 is increase of time of run, and as I recall it, the Dubbs—I think it was the Dubbs patent, was it?

Q. That is right. A. The patent increased the run some considerable time.

Q. Well, if you will just read—— A. That was in the 3249
record.

Q. If you will just read what it says there,——

Mr. Harris: I think the Judge is doing that.

The Witness: You just asked me to explain, I think.

Mr. Thiess: All I wanted was to have you read them, so we could get them ourselves.

The Witness: I said the increased time of run.

Mr. Thiess: All right.

The Witness: That is what the first one says.

Mr. Thiess: O. K.

3250 The Witness: The second, great commercial success—wonderful—now, I think—wonderful recognition by the art. That is 2.

Mr. Harris: Mr. White, don't you think the Judge should be allowed to explain,——

The Master: Yes.

Mr. Harris: —if he cares to, as he goes along.

Mr. Thiess: If he wants to.

Mr. Harris: Anything he wishes to explain.

The Witness: Well, by that, as I recall it, the art generally recognized this Dubbs patent, and a
3251 great many people in the business took out licenses under the Dubbs patent and paid millions of dollars of royalty. That is what I had in mind by that.

The next I can't quite read, it is partly erased and badly written.

The fourth is: "The patent itself speaks of vapor liberation and vapor separation and distinguishes between the two."

Fifth: The patent should be interpreted, first, as a whole, second, so as to validate and vitalize, third——

Mr. Harris: Sixth?

3252 The Witness: No, that is one under sub.

Mr. Harris: Oh, yes.

The Witness: Third, against the defendant—that is, his contention—whose three men worked in the plaintiff's plant and tried to steal or get around the art. We should not sympathize with—something about tactics.

By Mr. Harris:

Q. These tactics, or such tactics? A. It isn't "such"—something about tactics this—I suppose it meant such tactics as this, but I was writing down while somebody else

was speaking—we didn't speak, but we write it down,—and that is what that means.

Q. And those notes indicate——

By Mr. Thiess:

Q. Those are your notes? A. Yes.

By Mr. Harris:

Q. —that is perhaps what Judge Thompson said? A. What is that?

Q. Do those notes indicate that perhaps those were points 3254
Judge Thompson made? He was the first speaker? A. I don't know whether it was Judge Thompson, or Judge Buffington, or what, but those were thoughts that were expressed.

By Mr. Thiess:

Q. Now, will you explain what this is?

(Mr. Thiess referred to the last page of the memoranda.)

A. Licensing of all the other patents and not simply the 3255
Dubbs patent.

Q. Now, these notes that you are reading now were the longhand notes at the end of the opinion, is that right? A. Yes, that is right.

Q. Draft of the opinion. A. Resulting in $33,500,000. That was the—I suppose referred to the great commercial success. This is——

Q. Will you explain what was meant by that, since you explained the others? A. I say, that referred, as I understand it, to the commercial success which I referred to.

Q. I see. A. That is all the saving in the duration of run was discovered by Trumble—that is Buffington, I put Buffington there at the end, that was his contention, that it was discovered by Trumble.

3256 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Harris:

Q. And he was at first for reversal? A. He was for reversal. Then he assigned me to write the opinion and said he would see just what view he took after he saw my opinion, and I wrote the opinion and gave it to him and filed it, when he returned it to me, without any dissenting opinion.

2. Vaporization does not take place in initial tubes or B tubes or its equivalent—that is Buffington.

I don't think so—that is my comment.

Q. In other words, that meant you did not agree with
3257 him? A. Did not agree with him. The facts or evidence do not so establish or justify this conclusion.

Q. Those are your notes, too? A. That is my comment on Buffington's contention. Third, don't accept distinction between generation and liberation of vapor.

Q. That was Buffington, again? A. No, that was mine.

Q. That is where you disagreed with him, again. A. 4: Says they induced us by arguments in the Trumble patent, now they came here and are claiming the same thing in this case—an imposition upon us. As I understood it, they were taking the opposite view from which they took in the Trumble patent.

Q. By "they" you mean—— A. I mean counsel.
3258 Q. Well, counsel for which side, for the Root? A. Yes.

Mr. Neuman: No, you mean Universal's counsel, that was his point.

The Witness: Let me see,——

Mr. Harris: Maybe that was Judge Buffington's view, then.

The Witness: That might be. That is what I say there, "Says they induced"—yes, Buffington, I assume that is what it meant, Buffington said they induced us by argument in the Trumble patent, now they

come here and are claiming the same thing in this case, an imposition upon us. I think that that is Judge Buffington's position.

Mr. Harris: May I see that, Mr. Thiess, please?

Mr. Thiess: Well, now, just one minute.

By the Master:

Q. Judge Buffington did not dissent, however? A. I beg your pardon?

Q. Judge Buffington did not dissent in the case? A. No, he did not dissent. 3260

By Mr. Thiess:

Q. And do you know why he did not file a dissenting opinion? Was that ever discussed with you? A. No, that was not discussed with me.

Q. You don't know anything about that? A. No, I do not. Often when we differed in conference, after the opinion was assigned and was written, the person who differed with the other two would be convinced, or wasn't sufficiently sure of his ground that he felt that he could write a dissent, and so this opinion was handed back to me without any dissent. What Judge Buffington said when he did, I do not recall. 3261

Q. And you have now read into the record, Judge Davis, all your longhand pencil notes—— A. That is right.

Q. —on your conference notes? A. That is right, and I sent it——

Mr. Harris: Are you going to offer this?

Mr. Thiess: Yes.

A. (Continued) And I sent it to the Master with all the notations that I had made, without a single erasure. I felt that the Master and the Court were entitled to know all the facts concerning the case.

Mr. Harris: Well, now, are you offering this in evidence?

Mr. Thiess: I am going to offer it in evidence.

Mr. Harris: Well, do you offer it?

Mr. Thiess: Yes.

Mr. Harris: Because I want a preliminary cross-examination.

Mr. Thiess: All right. Now, I now offer in evidence as Amici Exhibit 100 Judge Davis's conference notes——

3263 Mr. Harris: To which, about which he has just been testifying.

Mr. Thiess: —in the Root case.

Mr. Harris: To which he has just been testifying.

Mr. Thiess: That is right, if you want that on the record.

Mr. Harris: Well, I want to identify it, that is all.

Mr. Thiess: Well, it is identified——

Mr. Harris: All right.

Mr. Thiess: —by conference notes.

(Direct examination suspended.)

3264 *Cross Examination by Mr. Harris:*

Q. Now, Judge Davis, do I understand that this was the —omitting the pencil notations upon this document—that it constituted a typewritten memorandum which you prepared in advance of the conference with the other judges? A. Yes, that was our custom, when you read a case, we would make a memorandum, and in important cases the memorandum would be rather full, which we would use in discussion at the conference.

Q. Now, that memorandum for conference represented your views at that time for the purpose of the conference, did it not? A. Yes.

Q. And Judge Thompson, as the junior on the bench, first expressed his views? A. Yes.

Q. And thereafter you expressed yours? A. Yes.

Q. And thereafter Judge Buffington expressed his? A. Yes.

Q. Now, the memoranda, pencil notations, which you made at the end of this memorandum dealt with—as you have testified—with Judge Buffington's comments, and in some cases your comments upon his comments? A. That is right.

Q. Would it not appear, therefore, and is your recollection not refreshed, therefore, that the pencil notations on the first page which you referred to and read were probably Judge Thompson's views, since he was heard first, and since your views were already embodied in the typewritten memorandum? A. Well, they were not my views except as I commented upon their views. 3266

Q. Yes. A. The favorable comments to the decision would be Judge Thompson's views.

Q. Well, then, those would be the ones that are on the first page, numbered 1, 2, 3, 4 and so forth? A. Well, at least some of them.

(The witness examined the memorandum.) 326

By Mr. Thiess:

Q. Well, you wouldn't know——

Mr. Harris: Just a minute.

By Mr. Thiess:

Q. —at the present time?

Mr. Harris: Well, just a minute, I am asking—there is a question pending. You can ask him after he has answered my question.

The Witness: I do not think that those are mine—are my ideas. I was taking them down as expressed by one or the other judges.

By Mr. Harris:

Q. And since Judge Thompson spoke first and was for affirmance, and Judge Buffington spoke last and was for reversal, and since Judge Buffington's comments are on the last page, is your recollection not refreshed that the notes on the first page are probably taken from Judge Thompson's
3269 remarks? A. My thought is that they are so taken. I have filled up all the space I had there on the first page, and then on the last page I took Judge Buffington's comments, because I have attached his name to some of them.

Q. And they sound like the views of a man who was voting for reversal? A. Well, he wasn't affirming some of them.

Q. Yes, that is right.

By Mr. Thiess:

Q. Well, you are not certain——

3270 Mr. Harris: May I complete the preliminary cross-examination?

Mr. Thiess: All right, I think it would be well to put this question right in here, while all this is on.

Mr. Harris: I think I am through, but just one second.

I have no objection to the admission of the document.

(Memorandum in the matter of Root Refining Co. versus Universal Oil Products Co., produced by Judge Davis, was marked Amici Exhibit 100.)

(Direct examination continued.)

By Mr. Thicss:

Q. You are not certain, Judge Davis, are you, that the comments on the first page in longhand in pencil are Judge Thompson's views? They might have been your views, or Judge Thompson's views, or Judge Buffington's views, according to your present recollection? A. I think that——

Q. I mean your views or Judge Thompson's views. A. Yes—I think that they were Judge Thompson's views, because I think you will find all that he says there, or that he 3272
said there, contained in the memorandum itself, which were my views before I came to conference, and I think I would not have written, just repeated what I had said in the memorandum, because it was mine, and I was going to take it with me. I wanted the views of the other judges.

By the Master:

Q. There is nothing on that paper to show the date when the conference took place, is there, Judge Davis? A. No, I think not, Mr. White. It was not our custom to do that.

By Mr. Harris: 3273

Q. Anything on the back——

The Witness: But it was a Monday, I think.

By Mr. Harris:

Q. Anything on the back of it, anything on the back? A. No, sir, only this was case 197 and 176, Root Refining Company versus Universal Oil Company, Davis. That shows my memorandum. It was our custom, and I think it was not departed from in this case, to hear them the following session of the court on the Monday of the first day of that session.

By Mr. Thiess:

Q. The following month? A. Following the argument

Q. Yes. A. Next month following the argument.

Q. Yes. A. On Monday, the first day. That is all I know about the date, and that is probable.

Q. Now, I would like to recall to you something with respect to your trip to Florida and Miami in the year 1935. Do you remember that when you went to Miami in 1935 that you stopped at Mount Dora? A. Yes—well, I do not remember that distinctly, but I usually did.

3275 Q. And did you visit with your cousin, Charles Stokley, when you stopped at Mount Dora in this particular year 1935? A. I would see him there.

Q. And have you any recollection that in this year, 1935, when you were on your way to Miami and visited your cousin Stokley that he told you about his financial difficulties? A. Yes.

Q. When was the first—I will put it this way—when was it that you first personally became acquainted with your cousin Stokley? How long had you known him personally? A. We were born in North Carolina in the same county, but I didn't know him, I think, until I began to go to Florida. I knew there was such a person and knew who his mother
3276 was, she had visited us, but I do not recall having met him. He went to Florida when he was just a mere boy and I never went to Florida until, oh, I think around '30, or something like that, '28, '29, I am not sure of the date exactly.

Q. And it was about that time that you met him—— A. Yes.

Q. —for the first time personally? A. Well, I am not quite sure about that, either. He made several trips north. He represented the Orange Growers Association of Florida and made some trips north, and he stopped at our home once or twice on his way up to Connecticut or somewhere. Whether

that was before I went to Florida or after, I am not quite sure. I have no data.

Q. Have you any recollection at the present time of approximately how many times you met him personally before 1935? A. No, but I—I do not think many times, for the reason that before about then I went by train and did not stop at Mount Dora. That did not go that way. One time I came up to Eustace, Florida, five miles away from Mount Dora, when my brother was preaching there, he was pastor at Eustace, and I saw him then.

3278

By Mr. Harris:

Q. Saw Mr. Stokley then? A. Saw Mr. Stokley, he lived five miles away from Eustace. That was before I began to drive, but after I began to drive, I went by Mount Dora, and the young man and his wife who kept the Lakeside Inn—a beautiful little hotel overlooking Lake Dora—were very good friends of my daughter's, the young lady was married by the keeper of that hotel; took a course over near New Hope, near our home, and she used to come over and spend the weekends, and so we went by and used to stop at the Lakeside Inn when we were driving, stayed there most of our vacation, and then we would go on down to Miami and spend a few days at Miami Springs Sanitorium, kept by Dr. Kellogg, then come back and stop on our way home.

3279

By Mr. Thiess:

Q. Well, is it your understanding that you only spent a few days at this Miami—— A. Sanitorium?

Q. Yes, at the Sanitorium. A. Well, sometimes longer than others, sometimes it would be three or four or five days, other times probably a couple of weeks.

Q. Now, on this occasion in 1935 when you met your cousin Stokley on your way down to Miami did he tell you that the Town of Mount Dora had foreclosed on certain of

3280 *J. Warren Davis—For Amici Curiae—Direct*

his orange grove properties because of paving taxes and assessments? A. I do not know whether he told me that or not. As a matter of fact, I do not know when they took over his property, but I knew that they held tax liens against his property and he asked me if I could——.

Q. Go ahead. A. —secure a loan by which he could save his property, and I asked him how much it was, and he says, around twenty-nine or thirty thousand dollars, and I told him that I could not secure that much, I was sure, and asked him to see if he couldn't compromise that amount, and I think, as I recall it, that all this was told me when I
3281 was on my way down to Miami, I always went there before I came back, and at some time I understood that the Town authorities had led him to believe that he could compromise it for seven thousand, five hundred.

Q. Well, did he tell you that he was financially unable to redeem these properties? A. Oh, yes, he was.

Q. And—— A. I do not know that he said that in exact words, but we all understood that he was.

Q. And did he tell you that he had exhausted all possibilities open to him for borrowing the money to redeem this property? A. I do not——

3282 *By Mr. Harris*:

Q. Did he, or did he not? A. I do not know what he said about that.

By Mr. Thiess:

Q. Well, do you know whether he tried to borrow the money locally? A. Well,——

Q. Did he say anything to you about that? A. Not at that time, as I recall it. After negotiations had gone along, and I was under the impression that I might get the money, he told me sometime that one of the town council wanted it and had raised the ante on him.

Q. At the time, at this particular time, did he give you an estimate of the value of the orange grove properties which he had in Mount Dora—— A. Yes, he did.

Q. —and on which the town had foreclosed? A. Yes.

Q. And how much did he tell you that they were worth? A. Well, he told me two or three things about it. One time he said, told me he had fourteen blocks, I think most of his properties are in the limits of the Borough of Mount Dora—I mean had nine blocks, and they were cheap at two thousand dollars a block.

Then, again, he told me that he was mistaken as to the 3284
number of blocks, that he had fourteen blocks, and they were cheap at three thousand dollars a block.

He has a nice property there overlooking Lake Dora, with a lot of cypresses on the northwest that break off the north cold winds, and often when other properties, the orange groves are freezing blossoms, why, his escape, and he attends to them very well, and it is a beautiful grove. He has a nice home and beautiful grove, probably no better in the county than that.

Q. Did you inspect his properties? A. Oh, I saw them all many times.

Q. And were you familiar with this property prior to the time in 1935 when he told you about his financial diffi- 3285
culty? A. Yes, I had been through, whenever I went there, why, I would go around with him. If I was staying at Lake Dora I would go over there and drink orange juice and go around his properties with him and look at the oranges, and get orange blossoms, and things of that kind. I knew generally his properties.

Q. As I understood your testimony, your cousin asked you whether you personally could make this loan, is that right? A. I do not know that he asked me that. He asked me if I could get a loan for him.

Q. And did you tell him you would try to get somebody —— A. Yes, I did.

Q. —at that time to make this loan? A. After he had made efforts at compromise, and we thought that he could make the compromise, I told him that I would try.

Q. Well, did you tell him at the time that you were down there in 1935 that you would try to get somebody to make the loan? A. Yes.

Q. And whom did you have in mind at that time?

Mr. Harris: Well, if anyone.

A. Well, I had in mind primarily one of two men. One
3287 was Mr. John A. Campbell, who was probably first citizen in the City of Trenton, president of the oldest bank in New Jersey, president of the Trenton Potteries Company of New Jersey, and a man quite well to do, and one of the best friends, probably the best friend that I had in Trenton.

I had in mind another man by the name of Robert A. Messler. He was a man very well to do, president of our board of trustees in the Central Baptist Church, of which I was a member, and he invested in real estate and had quite a number of houses, quite a little real estate, I think when he died he had, oh, sixty, or something like that, houses, and I thought that this was a good investment at eight per cent, which was the legal rate of interest in Florida, a better
3288 investment than he had or could make in New Jersey, and I thought it might appeal to him.

I had primarily those men in mind.

By Mr. Thiess:

Q. Did you have either of the Kaufmans, David or Morgan Kaufman, in mind? A. No, I did not at that time have either one of them in mind, and never spoke to them until I had exhausted my efforts with Mr. Campbell and with Mr. Messler.

The Master: Shall we suspend?

Mr. Thiess: Just a minute.

J. Warren Davis—For Amici Curiae—Direct 3289

By Mr. Thiess:

Q. As I understand, did I gather from your testimony that neither Mr. Messler or Mr. Campbell were willing to make the loan? A. No, both gave the excuse, or the statement, that they were getting along in years and they didn't want to invest in real estate so far away from home, where they couldn't look at it or know anything about it except by hearsay or by long trips to Florida.

Q. Are Mr. Messler or Mr. Campbell still alive? A. No, both of them are dead, I am sorry to say.

3290 The Master: Well, we will suspend until two o'clock.

(Recess, one until two o'clock P. M.)

AFTER RECESS

Present: Counsel as before noted.

Evidence on Behalf of Amici Curiae (Continued)

J. WARREN DAVIS, recalled. 3291

Direct Examination (Continued):

The Master: You may proceed, Mr. Thiess.

By Mr. Thiess:

Q. Judge Davis, with respect to the payments to Mr. Ungerleider, in the second trial—yes, that is the Grand Jury testimony in Philadelphia, which is incorporated in the disciplinary proceedings; did you testify as follows:

"Q. Well, now, Judge, the payments after the investigation—of a few hundred dollars—they were

3292 *J. Warren Davis—For Amici Curiae—Direct*

paid by check? A. Some of them, and some of them were not.

"Q. Well, why is it that in the payments before the investigation you paid in cash and did not get any receipts at all, and therefore cannot establish any payments; but after the investigation you began to make payments by check? A. Because Mr. Ungerleider asked me to."

Do you remember so testifying? A. Yes, that is what I said here.

3293 Q. That is what I thought you did. A. Yes, I did.

Q. But I wasn't sure about it.

By Mr. Harris:

Q. Well, when you say what you said here, you mean you made the change because of Mr. Ungerleider's request? A. Yes, that is what I testified to.

By Mr. Thiess:

Q. But it was after the investigation had started? A. Well, I haven't the dates, but, anyway, I made it when he

3294 requested it.

Mr. Harris: Well, the checks will show when he started making payments by check. They are in evidence, or will be if Mr. Thiess will offer them. He has them.

By Mr. Thiess:

Q. Now, Judge Davis, our records of the Battle Creek Sanitorium show that you were at this sanitorium from January 1st to March 5th—January 31st to March 5th, 1935. Now, I am calling that to your attention to ask whether this

will help you any to refresh your recollection as to when the first conference in the Root case was held. A. Yes.

The Master: What did you say those records show?

Mr. Thiess: He was in Florida from January 31st to March 5th.

Mr. von Holst: 1935.

Mr. Thiess: 1935.

A. (Continued) The conference could not have been held when we were down there. Now, whether or not we had a conference before, in view of the fact that I was going to leave, I do not recall. 3296

By Mr. Thiess:

Q. Is it possible you might have had the conference after you got back? A. It is possible, but I think improbable.

Q. You think it is improbable? A. Yes.

Q. That you had it afterwards. What makes you say that, Judge? A. Because we usually did not go so long after our arguments before we had conference.

Q. Well,—— A. The Monday that I speak of, the following session, which was the first Monday of the month, was the fixed period for conference. 3297

Q. Yes. A. Now we might call a conference at any other time.

Q. And you wouldn't know, then, you couldn't give me a better recollection at the present time as to when that conference was held? A. No, Mr. Thiess, I have no recollection as to when it was held. I was giving you our custom. Sometimes we would fix a conference to suit our convenience, but the regular period for conference was the first Monday in each month.

Q. I see.

3298

The Master: Do the conference notes which Judge Thompson submitted show any date?

Mr. Thiess: No, they do not.

Mr. Harris: May I see those? I haven't seen them.

Mr. Thiess: We have them right here—we are ready to put them in—if you haven't seen them. I was just coming to them. If you will let me have them, I expect to offer them, if there is no objection on your part.

Mr. Harris: I will let you know whether I have any objection if you let me read them.

3299

The Master: Also Judge Buffington's letter.

Mr. Thiess: Here is Judge Buffington's letter, right here.

Mr. von Holst: There is also the letter, attached——

Mr. Thiess: He has them all, they are all attached there.

The Master: May I see Judge Buffington's letter?

Mr. Thiess: It is right there.

The Master: Well, there was a copy of a letter from Judge Thompson.

Mr. Harris: That was from Judge Thompson.

3300

The Master: Oh, yes, that is the one I had reference to. May I see that?

The Witness: Do either of those show a date?

Mr. Thiess: No. I will show them to you in just a minute.

The Witness: That is all right, thank you.

Mr. Harris: Now, let me ask where these conference notes of Judge Thompson came from.

Mr. Thiess: The Master.

Mr. Harris: From whom?

Mr. Thiess: The Master got them.

Mr. Harris: When did he get them?

Mr. Thiess: Just recently.

Mr. Harris: Since the recess?

Mr. Thiess: Oh, yes.

Mr. Harris: Did you get them today, Mr. White?

The Master: No, I got them—I can tell you exactly —I think I advised all counsel that I had them, didn't I?

Mr. Thiess: Yes.

Mr. Harris: I don't—did you?

Mr. Thiess: I think you advised us yesterday morning, when we got here. That is when we found 3302
out.

Mr. Harris: Did you?

Mr. Thiess: Yes.

Mr. Harris: You didn't advise us?

The Master: I think I did.

Mr. Harris: There may be a letter.

The Master: Yes. Well, the letter from Judge Thompson's secretary is dated October 1st, 1942, and the letter from Judge Davis, September 27, 1942.

Mr. Harris: Well, the letter from Judge Buffington is September 28th.

The Master: September 28th, that is right. See, I was asked to get them at the last hearing before this 3303
one. I think I advised all counsel.

Mr. Harris: I just didn't know. I haven't been to my office since last Friday.

The Master: Well, you ought to have gotten it before that. I don't understand why you didn't.

Mr. Harris: I don't recall receiving it, I don't doubt—I am sure I must have.

Mr. Thiess: Well, as far as I understand, Mr. Harris, you have no objection to these?

Mr. Harris: No, none whatever.

Mr. Thiess: All right, then, we offer as Amici Exhibit 101 Judge Thompson's conference notes in the case of Root versus Universal.

3304 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Harris: Now, just a minute, you concede that at the top of this exhibit the legend "Buf. R" means that at the first conference, at least, Judge Buffington voted for reverse'?

Mr. Thiess: That is the way it appears.

Mr. Harris: And that the legend "Davis A" and "Thomp. A" indicate that at the first conference, at least, Judges Davis and Thompson voted for affirmance?

Mr. Thiess: I presume that is what it means.

3305 Mr. Harris: Well, you are not contending anything——

Mr. Thiess: No.

Mr. Harris: We will assume that, unless you have further information.

(Memorandum in the matter of Root Refining Co. v. Universal Oil Products Co., of Judge J. Whitaker Thompson, was marked Amici Exhibit 101.)

By Mr. Thiess:

3306 Q. Now, Judge Davis, I call your attention to a letter under date of January 18, 1935, from Joseph Buffington, addressed to Hon. Victor B. Woolley, Hon. J. Warren Davis, Hon. J. Whitaker Thompson, your address being care of Mount Dora, Florida. Do you remember receiving that letter.

(The witness examined the letter.)

A. I don't remember receiving it, Mr. Thiess, but I have no doubt that I did.

Mr. Thiess: All right, I would like to offer this letter just identified by Judge Davis, as Amici Exhibit——

Mr. Harris: Not identified by Judge Davis, at all.

Mr. Thiess: Well, O. K., then——

Mr. Harris: I don't object to it, but I just object to your saying he identified it, when he specifically stated he didn't receive it.

Mr. von Holst: He said he didn't recall receiving it.

Mr. Thiess: He didn't recall receiving it, he said.

Mr. Harris: Well, he is certainly not identifying it.

3308

By Mr. Thiess:

Q. Well, do you remember receiving that letter? A. No, I don't remember receiving the letter, but I have no doubt that I did receive it, because, as I see here, there is assigned to Davis 147, 176. That is these cases, I understand.

Q. That is right. A. And generally he assigns his cases in this manner.

Mr. Harris: I understand that copy was gotten from Judge Buffington, Mr. White?

The Master: Yes, Judge Buffington's secretary.

Mr. Harris: We have no objection to it.

Mr. Neuman: Judge Thompson. 3309

The Master: I think Judge Thompson sent it.

Mr. Neuman: Judge Thompson.

Mr. Harris: The date is January 18, 1935, isn't it?

Mr. Thiess: That is right.

The Master: I have a letter from Judge Thompson's secretary, if you want to see it.

Mr. Harris: Oh, no.

The Master: She says:

"In reply to your letter of September 22nd and complying with Judge Thompson's instructions to me, I am enclosing herewith conference notes in the above matter, Judge Buffington's letter of January 18th,

1935 indicating that the case was assigned to Judge Davis for an opinion and copy of Judge Thompson's letter of June 6th, 1935 returning the opinion to Judge Davis."

The Witness: May I make a remark now?

Mr. Thiess: You may.

The Witness: This case was argued on the 7th of January.

Mr. Thiess: 7th of January, yes.

By Mr. Harris:

3311 Q. These cases were not assigned for opinion until after the first conference had been had, were they, Judge Davis? Were cases assigned for opinion prior to the first conference? A. No, they were not assigned until we had had a conference and reached a decision, and so the conference in this case, which would ordinarily have been on the first Monday of February, must have taken place before then, because some of us were going away.

By Mr. Thiess:

Q. But you don't know how soon before that? A. I do not, no, sir.

3312 Mr. Harris: Well, at least, prior to January 18.

The Witness: But for the facts you have told me, I would have said following our general custom it took place on the first Monday of February.

By Mr. Harris:

Q. Is your recollection refreshed by this document that the conference took place prior to January 18,— A. No.

Q. —1935? A. No, it is not refreshed, because I do not know the date when the conference took place, but it did take place before this.

Q. Well, that letter is dated January 18th. A. Yes.

By Mr. Thiess:

Q. Then, as you now understand it, in this particular instance in connection with the Root case you did not follow your ordinary procedure? A. Could not have done it.

Q. That is your recollection at the present time? A. Well, I have no recollection about it, but I am arguing from the custom of the Court, and from what I know, it must have taken place before that letter was written.

Q. It is your deduction— A. That is right. 3314

Q. —In view of this letter of January 18th? A. That is right.

Mr. Harris: We have no objection. Has that been marked yet?

Mr. Thiess: Not yet, no.

The Master: At what address is that letter written?

Mr. Thiess: It is addressed to all three of the judges, and it is addressed to Hon. J. Warren Davis at Mount Dora, Florida.

By Mr. Thiess: 3315

Q. Does this letter of January 18, 1935, refresh your recollection at all as to when you left for Mount Dora, Florida? A. No, it doesn't. I have no data about that.

Q. Would it have been before January 18th? A. Well, I—I am assuming that it would. Otherwise I doubt that the letter would have been addressed there. Judge Buffington ordinarily would have known my whereabouts. Now, whether I actually left or whether we had a conference the day before and he assigned it on the day I left, I do not know. He generally assigned the cases for opinion immediately after conference, and sometimes when I was going away, or he was going away, or Judge Thompson was away for any reason,

why, he would suggest, somebody would, that we have a conference earlier, on cases we could get ready.

The Master: Have you verified the date of the argument yet?

Mr. Thiess: January 7th.

The Master: I knew that was stated this morning, but I thought there was some doubt about it in your minds. What day of the week was that, does anyone know?

Mr. Thiess: January 7th?

3317 Mr. Neuman: It was a Monday.

The Master: Monday?

Mr. Thiess: That was a Monday.

The Master: If there is any doubt about those dates you can get a copy of the docket entries.

Mr. Thiess: We have got the docket entries here and we can put them in.

The Master: Yes.

Mr. Thiess: January 7th was on a Monday.

The Master: Monday.

Mr. Harris: And January 18th that year was on a Friday, was it?

Mr. Thiess: On a Friday.

3318 Mr. Harris: That is the date of this letter.

The Master: Yes.

Mr. von Holst: Do you want to offer this letter?

Mr. Thiess: I now offer in evidence the letter from Judge Buffington to Judges Woolley, Davis and Thompson under date of January 18, 1935, as Amici Exhibit 102.

(Letter dated January 18, 1935, from Joseph Buffington to Hon. Victor B. Woolley, Hon. J. Warren Davis and Hon. J. Whitaker Thompson was marked Amici Exhibit 102.)

3319

Mr. Thiess: I also offer in evidence a letter from —you are satisfied that this is a letter from Judge Thompson to Judge Davis?

Mr. Harris: Yes, I am.

Mr. Thiess: All right, I offer in evidence as Amici Exhibit 103 a letter under date of June 6, 1935, from Judge Thompson to the Hon. J. Warren Davis.

(Copy of letter dated June 6, 1935, from Judge Thompson to Hon. J. Warren Davis was marked Amici Exhibit 103.)

3320

Mr. Thiess: Mr. Harris, this is a letter just written by Judge Buffington. He doesn't give the year. Is it satisfactory to put the year 1942 in here?

Mr. Harris: That is the fact, Mr. White, is it not, Judge Buffington's letter which is dated September 28th—1942?

The Master: Oh, yes, it was received a short time ago.

Mr. Harris: Certainly.

Mr. Thiess: I also offer in evidence as Amici Exhibit 104 Judge Buffington's letter to Master White, under date of September 28, 1942.

3321

Mr. Harris: No, under date of September 28th, which is agreed to be 1942.

Mr. Thiess: Yes, agreed to be 1942. I didn't think there would be any point of it.

(Letter dated September 28th (by agreement, 1942) from Joseph Buffington to "My Dear White" was marked Amici Exhibit 104.)

Mr. Harris: Well, then, why don't you put Judge Thompson's letter to the Master in, too, or his secretary's letter, enclosing the conference report?

Mr. Thiess: I also offer in evidence as Amici Exhibit 105 letter dated October 1st, 1942, from Hannah

3322 *Colloquy*

O. Rivkin, Secretary to Judge Thompson, to Master White.

(Letter dated October 1st, 1942, from Hannah O. Rivkin, Secretary to Judge Thompson, to Thomas Raeburn White, Esquire, was marked Amici Exhibit 105.)

Mr. Harris: And what is the other letter?

Mr. Thiess: The other letter is a letter from Judge Davis to Master White.

Mr. Harris: I haven't seen that one.

3323 Mr. Thiess: We have no desire to put it in unless you want us to.

Mr. Harris: Well, I think you might just as well put that in and make the record complete. Then you will have all three judges' letters.

Mr. Thiess: All right, then, we will offer in evidence as Amici Exhibit 106 letter from J. Warren Davis to Thomas Raeburn White, the Master.

(Letter dated September 27, 1942, from J. Warren Davis to Thomas Raeburn White, Esq., was marked Amici Exhibit 106.)

Mr. Thiess: Now, have you looked at this docket

3324 to satisfy yourself that the argument was on January 7th?

Mr. Harris: I think this at least ought to be marked in evidence, photostatic copies of the dockets in the Circuit Court of Appeals in the Root cases.

Mr. Thiess: I offer in evidence the docket sheet of the case of Root Refining Company versus Universal Oil Products Company, number 895 in Equity, on the patent number 1,392,629, as Amici Exhibit 107, and the docket sheet in the case of the Root Refining Company versus Universal Oil Products Company, number 716 in Equity, on patent number 1,537,593, as Amici Exhibit 108.

J. Warren Davis—For Amici Curiae—Direct 3325

(Certified photostatic copy of docket entries in the case of Root Refining Company, Defendant Appellant vs. Universal Oil Products Company, Plaintiff-Appellee, in the United States Circuit Court of Appeals for the Third Circuit (No. 5648), was marked Amici Exhibit 107.)

(Certified photostatic copy of docket entries in the case of Root Refining Company, Defendant Appellant vs. Universal Oil Products Company, Plaintiff-Appellee, in the United States Circuit Court of Appeals for the Third Circuit (No. 5546), 3326
was marked Amici Exhibit 108.)

The Master: Gentlemen, it occurs to me that, there being a little confusion about these dates, it would be well to produce the docket entries to show what causes were argued during the first two weeks of January, or whether arguments did continue until the end of the second week in January.

The Witness: As a rule, Mr. White, we completed our hearings before January, sometimes cases held over into January, but as a rule we completed our cases before January.

3327

By the Master:

Q. So you think it is possible that may have been the only case you heard in January? A. It is possible.

The Master: Well, I think it would be well to clear that point up.

Mr. Von Holst: We will undertake to get that from Mr. Rowland.

The Master: I think it would be well to have it.

The Witness: Mr. Rowland could give you that at once.

The Master: Oh, yes, he can do it.

By Mr. Thiess:

Q. Now, as I understand, Judge Davis, from your testimony, this memorandum which has been offered in evidence as Amici Exhibit 100 was prepared by you between January 7th and January 18th? A. Yes.

The Master: Well, did he so state? I didn't get that.

Mr. Harris: Well, he is now stating it.

Mr. Thiess: He is now so stating it.

3329 *By Mr. Thiess:*

Q. Now, Judge Davis, isn't it a fact that when you went on to the Battle Creek Sanitorium in Miami Springs in 1935 you met Judge Buffington and David and Morgan Kaufman there? A. They might have been there at that time, I do not know of the particular years in which they were there, but they were there sometime when I was there —and perhaps times, when I was there.

Q. When you arrived in Florida in this particular year did you mention to either David Kaufman or Morgan Kaufman the financial difficulties of your cousin Stokley. A. No, sir.

3330 Q. Did you mention it to Judge Buffington? A. No, sir.

Q. Now, during the several weeks that you, Morgan Kaufman and David Kaufman and Judge Buffington were at the Battle Creek Sanitorium in 1935——

Mr. Harris: Just a minute, were they there for several weeks?

Mr. Thiess: Yes.

Mr. Harris: Together?

Mr. Thiess: The record shows that.

Mr. Harris: Well,——

Mr. Thiess: The record of the Sanitorium.

3331

Mr. Harris: —let's have the facts, if you are going to use them, suppose you refresh the Judge's mind,——

Mr. Thiess: All right, I am trying to expedite this.

Mr. Harris: —by giving him the exact date.

The Master: I think it was stated a few moments ago that they were there from the 31st of January to——

Mr. Thiess: No, that was Judge Davis.

The Master: Oh, Judge Davis.

3332

Mr. Thiess: Now, let's get the others. What page of the record is it?

Mr. Neuman: It is Amici Exhibit 56. Judge Buffington arrived on January 29, 1935, and departed March 2nd, 1935.

Mr. Harris: Whom are you taking next, David Kaufman?

Mr. Neuman: David Kaufman's arrival is January 29, 1935, and the last date, I think the departure is February 27th, 1935.

Mr. Harris: By the way, Mrs. Davis was there in 1935, too, apparently.

3333

Mr. Thiess: Well, we have got Davis's dates.

Mr. Harris: Mrs. Davis.

Mr. Thiess: Mrs. Davis?

Mr. Neuman: Well, there is a bill here for Mrs. J. W. Davis of January 31, 1935 through March 5, 1935.

The Witness: Mine would be the same.

Mr. Neuman: Morgan Kaufman's arrival is February 9, 1935, and departure, March 2nd, 1935.

Mr. Thiess: All right.

Mr. Harris: Now, the only time they were all there was during February, wasn't it?

3334 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Neuman: Yes, when Morgan Kaufman got there on February 9th, then they were all there.

Mr. Harris: Yes.

Mr. Thiess: They were all there.

Mr. Neuman: Until the end of the month.

By Mr. Thiess:

Q. Now, during this period, Judge Davis, were you in constant contact with one another? Did you eat together, take your baths together, go out together? A. No,—if by
3335 eating together you mean in the same dining room, yes.

Q. I mean at the same table. A. But we did not sit at the same table.

Q. And you didn't have social contacts and have your amusements and diversions together with these other people? A. No more than I would with the hundred other guests who were there.

Q. In other words, this meeting at—or, this fact that these four parties were at the Battle Creek Sanitorium in Miami was not a matter of pre-arrangement, it was just a coincidence? A. Not at all.

Q. What? A. Just a coincidence.

Q. And you— A. Judge Buffington doubtless knew that
3336 I was coming there, but whether the Kaufmans knew it or not, I do not know. They did not know it from me.

Q. Now, isn't it also a fact, Judge Davis, that for this first year—or, for this year 1935 that you and Judge Buffington did not pay any hotel bills at the Battle Creek Sanitorium? Do you remember that? A. I think there was some year which—whether it was that year or not—which it was the policy of the Kellogg Sanitorium not to charge Federal Judges for their meals and room.

Q. Were there any other Federal Judges there that fared the same way? A. I don't know, but that is what Dr. Kellogg told me. He told me that before we went there.

Q. And — A. Whether it was '35 or not, I do not know at.

Q. You wouldn't question that it was '35,— A. No.

Q.—if the records so show? A. I would not.

Q. Now, while you were at this Battle Creek Sanitorium Miami did you do any work on any of your cases, while ou were there? A. Sometimes.

Mr. Harris: You mean in 1935, did he, specifically?

y Mr. Thiess: 3338

Q. Did you in 1935, or '36? A. I assume that I did. I enerally took some cases with me, and the cases that I took ith me were small cases, the records of which were not ulky, and I could take them along and didn't require any reat investigation.

y Mr. Harris:

Q. You didn't have a law library available down there? . No, unless I went into some lawyer's office, and that I hink I did not do but once.

The Master: Pardon me just a moment, Mr. Harris, 3339
there is the letter I wrote, October 2nd.

(The letter was produced.)

Mr. Harris: Yes.

The Master: I was afraid I might have overlooked it.

Mr. Harris: Oh, no, I am sorry, I didn't for a inute suspect that you hadn't notified me. It is entirely y own fault, sir.

The Master: Well, it would have been an error.

Mr. Harris: I never had any other thought.

3340 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thicss:

Q. Judge Davis, didn't you have a secretary that worked for you at times while you were at the Battle Creek Sanitorium in Miami? A. What year?

By Mr. Harris:

Q. You mean a law secretary, or a stenographer? A. It was stenography, she was called your secretary.

By Mr. Thicss:

3341 Q. What was this secretary's name, Judge Davis, do you remember? A. Martha Kliesh.

Q. And where does she reside, do you know? A. She resides—oh, between Trenton and Princeton, on the highway.

Q. You took her to Florida with you? A. One year.

Q. And do you remember what year that was? A. No, I do not.

Q. Could it have been 1935 or '6? A. Well, it could have been.

Mr. Harris: Well, why do you say '35 or '36?

The Witness: Or it could have been '37. I do not

3342 recall the year.

By Mr. Theiss:

Q. Did she stay at the Battle Creek Sanitorium? A. No.

Q. Where did she stay? A. She stayed across the block front, at a man by the name of Van's.

Q. Was that a hotel or rooming house? A. No, that was a man who had apartments and rooms, a man whom I knew and had become acquainted with while—some of the years I had been there. I think that it wasn't—she wasn't there in '35, if that was the first year I went to the Battle Creek Sanitorium, because I had known Mr. Van before she

went down and knew I could get rooms for her—that I could.

Q. You spell that V-a-n? A. I don't know whether it is V-a-n or V-a-n-n. I think it is V-a-n.

Q. Now, is it a fact that on your way back from Miami, Florida during this 1935 visit to Florida you again stopped at Mount Dora, Florida, and visited with your cousin,— A. I think——

Q. —Charles Stokley? A. —it would be a fact, I have no distinct recollection, but I think it was a fact.

Q. Did you at that time again discuss his financial diffi- 3344
culties with him? A. Yes.

Mr. Harris: Well, again, I thought he said that was the first time he discussed them.

Mr. Thiess: No.

The Witness: When I was on my way down.

Mr. Harris: Oh, on your way down, I am sorry.

By Mr. Thiess:

Q. Do you remember the substance of the conversation you had with him on the way back? A. Well, I—as I recall it, I am under the impression that he thought by his confer- 3345
ence with—I assume, the town authorities, that he could get a compromise for seventy-five hundred dollars. At least that was the impression I got from him.

Q. At that time did you endeavor to see and talk to Mr. Cooley? A. At that time?

Q. So that he personally could confirm this matter of the seventy-five hundred dollar settlement. A. I do not recall any effort to see him. If my memory serves me correctly I was informed that he was away.

Q. Now, at this time when you saw Mr. Stokley, on your way back, is it correct to say that you at that time informed him that you believed you would be able to obtain a loan

3346 *J. Warren Davis—For Amici Curiae—Direct*

for him for the purposes of the redemption of his property? A. I thought if the compromise could go through for seventy-five hundred I might get someone who could—who would be able to—be willing to put that much on his property.

Q. Did you at that time tell Mr. Stokley that you had just come back from your vacation at Battle Creek and that Mr. Kaufman would probably make the loan? A. No, I have no recollection of any statement to that effect, at that time.

Q. And did you advise Mr. Stokley at that time to ascertain definitely whether the town would accept the seventy-
3347 five hundred dollar redemption and to inform you of the fact, or have Mr. Cooley advise you? Do you remember that? A. I think I do.

Mr. Thiess: Have you got that letter?

The Witness: I have no distinct recollection of what I said to him, that is what I probably would have said.

(Discussion off the record.)

Mr. Harris: Do you want to put them all in, the whole bunch? If you do, I haven't any objection to. That tells the story.

3348 Mr. Neuman: Some of these you already have copies of, in the form of photostats.

Mr. Harris: That is not the point. Do you want to put them all in evidence? We won't object to that. That will save Judge Davis's time and everybody's time.

Mr. von Holst: It seems to me that might be the best thing to do. It might save a great deal of time.

(Discussion off the record.)

Mr. Harris: Let's put them in. We will read them at our leisure, and if we have to have Judge

Davis we will call him back at some time that is convenient to him in the future.

The Master: Very well.

Mr. Thiess: All right. Are you going to photostat all these letters and put them in the record?

Mr. Harris: Certainly.

(Discussion off the record.)

Mr. Harris: I understand that this is sort of a chronological story under one cover of the progress of this loan so far as it affects Judge Davis and Mr. Stokley, and I think that would be a logical way to 3350 put it in.

(Discussion off the record.)

Mr. Thiess: Is this the batch of letters? Out of what folder is this batch of letters?

Mr. Behrens: 6.

The Master: Those are some letters that were produced by Judge Davis.

Mr. Thiess: I understand, and I now offer in evidence the file of letters which Judge Davis has produced in response to paragraph 6 of the subpoena, as Amici Exhibit 109. 3351

The Witness: May I have them back later?

Mr. Thiess: Oh, you will get those back, certainly.

Mr. Harris: Will you count the number of letters there and just identify them?

Mr. Thiess: All right.

The Witness: Twenty-nine letters, I think——

Mr. Thiess: Thirty-nine, I make it thirty-nine letters and telegrams.

The Witness: Twenty-nine letters and ten telegrams.

Mr. Thiess: We check?

The Witness: We check.

The Master: Are these letters all passing between Judge Davis and Stokley?

The Witness: I think they are, I think they are.

Mr. Thiess: Or Cooley?

Mr. Behrens: Cooley and Stokley's son, some letters in there, I think.

The Master: They all relate to the Stokley loan?

Mr. Thiess: That is what I understand.

3353 *By Mr. Thiess:*

Q. That is correct, isn't it, Judge Davis? A. All are produced, I think, in obedience to that subpoena.

Q. And they relate to the Stokley loan? A. I think they do, negotiations and all of that.

(The following letters and telegrams were marked Amici Exhibit 109.)

Letter dated March 15 1935, from "Charlie and Delta" to "Dear Judge".

Copy of letter dated March 18, 1935, to "Dear Charlie".

3354 Letter dated March 28, 1935, from Thos. H. Cooley to Honorable J. Warren Davis.

Copy of letter dated April 5, 1935, to Thomas H. Cooley, Esq.

Copy of letter dated April 5, 1935, from "Your Cousin" to Mr. Charles L. Stokley.

Copy of letter dated June 13, 1935, to "Dear Charlie".

Letter dated June 23, '35 from Delta and Charlie to "Dear Judge".

Copy of letter dated July 1, 1935, from "Your Cousin" to Mr. Charles L. Stokley.

Letter dated July 7th, 1935, from C. L. Stokley to Judge J. Warren Davis.

Letter dated July 11th, 1935, from Paul Stokley to Judge J. Warren Davis.

Copy of letter dated July 17, 1935, to Paul C. Stokley.

Letter dated July 20th, 1935, from C. L. Stokley to Judge J. Warren Davis. 3356

Letter dated July 23, 1935, from Thos. H. Cooley to Honorable J. Warren Davis.

Copy of letter dated July 26, 1935 to Thomas H. Cooley, Esq.

Copy of letter dated July 26, 1935, from "Your Cousin" to Mr. Charles L. Stokley.

Letter dated July 29, 1935, from Thos. H. Cooley to Honorable J. Warren Davis.

Copy of letter dated August 9, 1935 to Thomas H. Cooley, Esq. 3357

Letter dated September 25, 1935, from Thos. H. Cooley to Judge J. Warren Davis.

Telegram dated October 3, 1935, from Thomas H. Cooley, City Attorney to Judge Warren Davis.

Telegram October 24 1935, from Thomas H. Cooley to Judge J. Warren Davis.

Copy of letter dated October 25, 1935, from "Your Cousin" to Mr. Charles L. Stokley.

Copy of letter dated October 25, 1935, from Judge Davis to Thomas H. Cooley, Esq.

3358 *Colloquy*

Letter dated Oct. 31st, 1935, from "Charlie" to "Dear Judge".

Copy of telegram dated November 5, 1935, from J. Warren Davis to Mr. Charles L. Stokley.

Telegram dated Nov. 6 1935, from Thomas H. Cooley to Judge J. Warren Davis.

Copy of telegram dated Nov. 6, 1935, from J. Warren Davis to Thomas H. Cooley, Esq.

Telegram dated Nov. 6, 1935, from C. L. Stokley
3359 to Judge J. Warren Davis.

Copy of letter dated November 14, 1935, from "Your Cousin" to Mr. Charles L. Stokley.

Copy of telegram dated Nov. 10, 1935, from J. Warren Davis to Charles L. Stokley.

Telegram dated Nov. 12, 1935, from C. L. Stokley to Judge J. Warren Davis.

Copy of day letter dated November 20, 1935, from J. Warren Davis to Charles L. Stokley.

Telegram dated Nov. 20 1935, from Thomas H.
3360 Cooley to Hon. J. Warren Davis.

Copy of letter dated November 21, 1935 to Thomas H. Cooley, Esq.

Copy of letter dated November 21, 1935 to Mr. Charles L. Stokley.

Letter dated March 31, '36, from Charlie and Delta to "Dear Judge" together with newspaper clipping.

Letter dated March 1, 1937, from C. L. Stokley to "Dear Judge".

Copy of letter dated March 8, 1937, from "Your Cousin" to "Dear Charlie".

Copy of letter dated March 16, 1937, to Morgan S. Kaufman, Esq.

Copy of letter dated July 8, 1935, from Thos. H. Cooley to Mr. C. L. Stokley.)

By Mr. Thiess:

Q. I call your attention, Judge Davis, to a letter of April 5th—

3362

Mr. Harris: Contained in Exhibit 109?

Mr. Thiess: Yes, addressed to—you have a copy of this, April 5, 1935.

(Discussion off the record.)

Mr. Harris: Maybe I can just look over his shoulder.

The Witness: Yes, go ahead.

By Mr. Thiess:

Q. —under date of April 5 1935, from you to Thomas H. Cooley, Esq.

3363

The Master: What date was that, Mr. Thiess?

Mr. Thiess: March 5, 1935.

The Witness: April 5th, isn't it?

Mr. Thiess: April 5th, I meant to say, yes.

The Master: April 5th, 1935?

Mr. Harris: Yes, sir.

By Mr. Thiess:

Q. Now I call your particular attention to the statement in the second paragraph of that letter, which reads:

3364

"I am sure the parties I have in mind here, whom I hope to get to advance the money, would require an abstract and probably a title insurance policy."

To whom did you refer to, by the "party"?

A. I thought——

Mr. Harris: Parties.

A. (Continued) I thought I might get either Mr. Campbell or Mr. Messler to take a mortgage on that or advance the

3365 money.

By Mr. Thiess:

Q. And you are quite positive that you were not referring to either one of the Kaufman's? A. No, sir.

Q. Were you? A. No, sir.

By Mr. Harris:

Q. You said, "No sir"; you mean you are quite sure that you were not? A. I am quite sure that I did not have them in mind and hadn't spoken to either one of them.

3366 *By Mr. Thiess*:

Q. In other words, your recollection is that this statement from the letter that I referred you to could not have been the Kaufmans, because, as you remember, you hadn't spoken to either of them—— A. No, sir.

Q. —at the time this letter was written, is that correct? A. No, sir.

Q. Well, my statement is correct, is it? A. Your statement is correct.

Q. Yes. A. That I hadn't spoken to them.

"Q. Now, in this letter you say, paragraph 1:

"I hope that you will be able to secure the compromise which you mention in full settlement of the paving and taxes."

Do you know what was done at that time in an effort to make this settlement and compromise for seventy-five hundred?

A. What letter are you referring to, Mr. Thiess?
Q. The one I was referring to before.

Mr. Harris: April 5th letter?
Mr. Thiess: April 5th letter, first paragraph. 3368
The Witness: Will you read the question?

(The question was repeated by the reporter as follows:

"Q. Now, in this letter you say, paragraph 1:
'I hope that you will be able to secure the compromise which you mention in full settlement of the paving and taxes.'
Do you know what was done at that time in an effort to make this settlement and compromise for seventy-five hundred?")

Mr. Harris: By whom?
Mr. Thiess: By Mr. Cooley, or anybody. 3369

A. No, I do not know what they did.

By Mr. Thiess:

Q. You have no— A. No, sir.

Q. They didn't advise you, and you have no recollection? A. They didn't advise me what they did. I understood they were trying to get the compromise through, but what they did in order to do it I do not know.

Q. Well, did they ever get through this compromise of seventy-five hundred dollars for seventy-five hundred dollars?

A. Well, apparently they did not, but Mr. Stokley thought that he had virtually gotten the consent of the town to do it. Mr. Cooley says here, "I have not as yet gotten consent of the Town to accept $7,500.00 . . ."

By Mr. Harris:

Q. You are reading from a letter of Mr. Cooley to you of March 28th? A. March 28th.

Q. 1935- A. Yes.

Q. Contained in this same exhibit? A. Same exhibit—

3371 ". . . in full settlement of the paving and taxes."

By Mr. Thiess:

Q. Do you remember, Judge Davis, when you were advised of the inability to effect the settlement in the sum of seventy-five hundred? A. I do not remember, aside from what these letters might disclose.

Q. And you don't— A. I haven't any distinct recollection.

Q. You wouldn't know who advised you, either? A. No, I know—I am advised in here by Mr. Cooley somewhere that the settlement was ten thousand dollars.

3372 Q. Well, with respect to that, did you advise Mr. Stokley, your cousin Stokley, that you would offer to secure the loan for him if the settlement could be effected for ten thousand dollars? A. I don't recall about that.

Q. Did you instruct your cousin Stokley to make such an offer for ten thousand dollars? A. No, I didn't instruct him to make any particular amount, an offer for any particular amount. I told him to see if he could compromise it, and get the lowest possible compromise that he could.

Q. Did you advise Mr. Cooley that you were willing to offer ten thousand dollars? A. All the advice that I gave Mr. Cooley, or information, is contained in these letters, and I do not recall such information to him.

Q. Well, prior to increasing the proposed amount for the settlement from seventy-five hundred to one thousand—A. Ten thousand, you mean?

Q. Or, ten thousand—did you consult the parties to whom you referred in this letter of April 5th? A. I might have done so.

Q. Do you have any recollection of that? A. No, I have no distinct recollection of it.

Q. Is there any correspondence here at all with respect to this Stokley transaction which refers to Mr. Campbell and —who was the other party? A. Messler.

Q. —Messler, that you said you took up this matter of 3374 the loan——

Mr. Harris: Just a minute, I object to that. The letters speak for themselves. It is just a question of looking through to see whether they refer to it or not. He asks whether they refer, and Judge Davis will either have to take the time to look at them, or the letters speak for themselves.

Mr. Thiess: Well, I will change my question, then, and ask him——

By Mr. Thiess:

Q. Do you know whether there are any letters which 3375 refer to either Mr. Campbell or Mr. Messler?

Mr. Harris: You mean in this Exhibit?

Mr. Thiess: Anywhere.

Mr. Harris: Oh.

Mr. Thiess: With respect to this loan. A. Trusting my memory, I do not recall mentioning the names of any parties in here until the time, about the time the deal was closed, but there might be, I can't say just what is in here, but I think there is not.

3376 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Well, you have brought all the letters on the Stokley loan so that if there are no letters here that don't mention Mr. Campbell or—— A. Messler.

Q. —Messler, there are no letters of that type? A. No.

The Master: You mean if there are no letters that do mention them,——

Mr. Thiess: That do mention them, that is what I meant to say.

The Master: —then there are no such letters.

3377

By Mr. Thiess:

Q. I show you a letter in this bunch of letters, Amici Exhibit 109, under date of July 26, 1935. Is this letter a reply from you to Mr. Cooley's—to a prior Mr. Cooley's letter?

(The witness examined the letter.) A. It seems to be.

Mr. Harris: May I just glance at it?

By Mr. Thiess:

3378

Q. Now, referring to the first paragraph of this letter, where you say, "I thought that I could get some friend of mine to loan him the money", were you referring to either one of the Kaufman's? A. No, I was referring to any friend that I could get.

Q. Now, Judge Davis, isn't it a fact that you spoke to Mr. Kaufman about a loan to Mr. Stokley in the spring of 1935? A. I don't think I spoke to him as early as that, I think it was two or three months before the loan was made that I spoke to him.

Mr. Thiess: Have you got that testimony?

The Witness: I have no specific data on that, and am stating purely from recollection.

By Mr. Thiess:

Q. Now, I call your attention to the testimony taken in the first trial, page 1264:

"Q. And when did you finally ask Mr. Kaufman about it, do you know? "A. It was some time in the spring of 1935."

This refers to this Stokley transaction. A. Yes. 3380

Q. Did you so testify? A. I have no doubt that I did, if it is there.

Q. Now, I show you a letter under date of July 29, 1935, from Mr. Cooley to yourself. Did you receive this letter?

(The witness examined the letter.)

A. Yes.

By Mr. Thiess:

Q. Now, in this letter I direct your attention to the statement that Mr. Cooley would like to know as soon as possible if Mr. Stokley can redeem the properties. What, 3381 if anything, did you do to ascertain when and how soon Morgan Kaufman could make the ten thousand dollar loan? A. That I do not now recall.

Mr. Harris: You mean could, or would? You said "could" make it.

Mr. Thiess: Could or would.

The Witness: Well, I didn't do anything to ascertain whether or not he could make it.

Mr. Thiess: Or whether he would make it?

The Witness: I assumed that he could if he wanted to.

Mr. Thiess: Yes, that is what I thought.

The Witness: But just when I spoke to him, I do not know. I think that up to this time, along about this time, I was still trying to get and hoping that either Mr. Campbell or Mr. Messler would see fit to invest in this proposition.

Mr. Harris: Now, Mr. Thiess, your question sort of suggested to the Master—he didn't have a copy before this, possibly, that Mr. Kaufman was mentioned by name in this letter. He is not.

3383 Mr. Thiess: No, he is not mentioned by name in this letter.

Mr. McCullough: Is this the letter that starts: "Your letter of the 21st inst. . . . ."?

Mr. Thiess: That is right.

The Master: I got the impression he was mentioned, from the way your question was phrased. Suppose you read that again.

Mr. Thiess: Will you read the question and answer?

(The testimony was repeated by the reporter as follows:

3384 "Q. Now, in this letter I direct your attention to the statement that Mr. Cooley would like to know as soon as possible if Mr. Stokley can redeem the properties. What, if anything, did you do to ascertain when and how soon Morgan Kaufman could make the ten thousand dollar loan?

"A. That I do not now recall.

"Mr. Harris: You mean could, or would? You said 'could' make it.

"Mr. Thiess: Could or would.

"The Witness: Well, I didn't do anything to ascertain whether or not he could make it.

"Mr. Thiess: Or whether he would make it?

"The Witness: I assumed that he could if he wanted to.

"Mr. Thiess: Yes, that is what I thought.

"The Witness: But just when I spoke to him, I do not know. I think that up to this time, along about this time, I was still trying to get and hoping that either Mr. Campbell or Mr. Messler would see fit to invest in this proposition.") 3386

By Mr. Thiess:

Q. Now, Judge Davis, don't you know, or do you remember that at about this time, July 29, 1935, Morgan Kaufman was on a vacation and unable to discuss the matter of the loan with you? A. No, I don't.

Mr. Harris: By "this time" you mean July 29th——

Mr. Thiess: 29.

Mr. Harris: —1935? 3387

Mr. Thiess: Have we got those docket entries there?

By Mr. Thiess:

Q. Judge Davis, referring you to the docket entries, Amici Exhibits 107 and 108, isn't it a fact that at the time that you received this letter, under date of July 29, 1936, that you had under consideration——

Mr. von Holst: 1935.

3388 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. 1935—you had under consideration a petition by the Root Refining Company for a re-hearing on the appeal? A. I know there was a petition, but whether it was under consideration, at this time I do not know. The records will show when it was filed and when it was disposed of.

Mr. Harris: Well, let the record—you would like the record to appear, wouldn't you?

Mr. Thiess: I would like to have the record show that it was July——

3389 Mr. Harris: On July 19th, 1935 a petition for re-hearing was filed, that on August 6th, 1935 an order denying the petition for re-hearing was filed, and that on August 7th an order for stay of mandate was filed, and on the same date—I mean, a petition for stay was filed, and on the same date such an order was filed.

Mr. Thiess: That is right.

By Mr. Thiess:

Q. I show you a letter written by you to Mr. Thomas Cooley, dated August 9, 1935. Did you send that letter?

(The witness examined the letter.)

3390 A. Yes, I sent this letter.

By Mr. Thiess:

Q. Now, referring to this letter, and particularly the statement in the letter, "The party with whom I have been negotiating is away just now and will not return until toward the last of this month or the first of next and I imagine that the matter can be disposed of immediately after his return.", now, who was the party that you were referring to in that letter? A. I now have no distinct recollection of who it was, but am inclined to think that it was Mr. Campbell, who was spending the summer in the Poconos.

Q. Now, are you quite certain that it was not Morgan Kaufman? A. It might have been, but I think not.

Mr. Thiess: Will you agree that this is the same letter?

Mr. Harris: As what?

Mr. Neuman: The one he is now showing him.

Mr. Thiess: I am now showing him——

Mr. Harris: Carbon copy of a letter from Judge Davis to Mr. Cooley dated August 9, 1935.

Mr. Neuman: Is the same as Government Exhibit 135. 3392

Mr. Harris: Is the same as Government Exhibit 135 for identification on the second criminal trial.

Mr. Thiess: Second criminal trial, that is right.

By Mr. Thiess:

Q. Now, referring to this Exhibit 135, on page 2540 of the second criminal trial did you testify as follows:

"Q. Judge Davis, 'the party with whom I have negotiated' set forth in that letter, that refers to Morgan Kaufman? A. That is my best recollection.

"Q. Thank you, very much. A. You are welcome." 3393

Do you remember that you so testified? A. I don't remember so testifying, but I have no doubt that I did, if it is so stated there.

Mr. Harris: Well, of course, Mr. Gahagan misquoted the letter. He says, "the party with whom I have negotiated", and the letter says, "the party with whom I have been negotiating".

Mr. Thiess: Negotiating, I understand that.

3394 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Now, when according to your recollection, Judge Davis, was the first time that you discussed this Stokley loan with Morgan Kaufman? A. I cannot tell the exact date, Mr. Thiess. It was somewhere along about this time or after this time, or it might have been a little before this time.

Q. By "this time," what do you mean? A. I mean August 9, 1935. I cannot recall, I have no data by which I can recall I only know that I was trying to get Mr. Messler and Mr. Campbell to loan this money, and when they refused I
3395 talked to Morgan Kaufman about it.

Q. Now, you say it may be before and may be after—— A. Yes.

Q. —the date of August 9, 1935? A. That is right.

Q. How much before and how much after could that have been? A. Well, I don't know.

Q. It might have been months before August 9th? A. I don't think it was before this time, if so, very shortly., I think it was about this time that I spoke to Morgan Kaufman.

Q. Well—— A. And I frankly now do not know whether this letter refers to Morgan Kaufman or to Mr. Campbell.
3396 It might refer to either. I say that in the light of the testimony which I have heretofore given that you have read.

Q. And you have no definite recollection at the present time as to when you actually talked to Morgan Kaufman —— A. No, I haven't.

Q. —or the circumstances when you talked to him? A. By circumstances, if you mean, where I met him——

Q. When, and where, and how you discussed it. A. I think that the first time I spoke to him about it was on the train, I think I met him on the train, either going to Philadelphia or coming from Philadelphia, to Trenton, I don't know which, but that is my recollection.

Q. And you don't know just exactly when that was? A. No, the exact date I do not, Mr. Thiess.

Q. Now, Mr. Campbell and Mr. Messler, did you go to them a number of times to present this—— A. Yes.

Q. —question of a loan? A. Yes, they considered it and said they would think it over.

Q. And they continually refused? A. Well, they didn't continually refuse but they kept thinking it over.

Q. How many times did you go to these gentlemen and talk to them—— A. I can't——

Q. —about this matter? A. I cannot tell you, I talked to them two or three times about it, as I would meet them 3398 here or there.

Q. Each one of them? A. Yes, both of them were my friends and I was hoping they would do it, and both of them, I know, wanted to do it, because of their friendship for me.

Q. And where did you meet these gentlemen? A. I would meet Mr. Messler in church every Sunday—probably that is a statement that is too broad—I would meet him in church, we were both on the board of trustees of the Central Baptist Church, and I would meet him in the board meeting, he was president of the Sunday School class which I taught, and I would see him whenever he was there; and I would meet Mr. Campbell here and there in Trenton.

Q. Mr. Campbell lived in Trenton—— A. Yes. 3399

Q. —also? A. Yes, he lived in Trenton.

Q. What did he do? A. He was president of the oldest banking institution in New Jersey, the Trenton Banking Company, and president of the Trenton Potteries Company, which became a crane output.

Q. And—— A. And——

Q. Go ahead. A. What else he did I don't know. He was director of several railroads.

Q. And whenever you met these gentlemen would you talk to them, during this period? Whenever you met these gentlemen during this period would you talk to them about

3400 this contemplated loan? A. I doubt that I could go that far, because it would have been rather a nuisance to them if I had done it whenever I met them, because I saw them more or less frequently, but I talked to them now and then about it.

Q. Do you know, Judge Davis, whether prior to August 9, 1935, both of these gentlemen, Mr. Campbell and Mr. Messler turned you down on this loan? A. No, I do not know just when they did, Mr. Thiess.

Q. You don't know when they finally did it? A. I do
3401 not know when they finally did it. That letter might have referred to Morgan Kaufman, and it might have referred to Mr. Campbell, I do not know.

By Mr. Harris:

Q. You mean the August 9th letter? A. That is right, August 9th, '35. I was rather sure, I thought in my mind if and when I spoke to Mr. Kaufman he would do it, for the reason that he was a younger man, for the reason my understanding was that he had considerable money, and was going to Florida, and was acquainted in and with Florida.

3402 *By Mr. Thiess*:

Q. Well, now, in your negotiations—— A. And, further, that I thought that that was a good investment, which a person with money and acquainted with the situation would readily take.

Q. Now, during these negotiations or these requests that you made of Messrs. Campbell and Messler, had your negotiations with them reached the point where they were sufficiently satisfied to make the loan, and talked about whether they wanted mortgages, or whether they wanted a title policy? A. That I do not recall.

Q. You don't know—— A. But I was sure that whoever took the loan or made the loan would want a mortgage or would want a title policy.

Q. And—— A. Especially with a property in Florida.

Q. Well, do you have any independent recollection at the present time that either Mr. Campbell or Mr. Messler gave you enough hope so that you got to the place of talking about the details of this loan with them? A. I don't think I talked about the details.

Q. Yes. A. I might have done so, but I haven't any distinct recollection. But I did know that if either of them took 3404
it, they were shrewd enough business men not to invest ten thousand dollars, or seven thousand, five hundred, down there in real estate unless they had a title policy.

Q. Well, can you state, Judge Davis, when after August 9, 1935 you talked to Morgan Kaufman? A. No, I cannot, because I have stated to the best of my recollection I do not know whether I talked to him before this, or at this time, or after this. It was somewhere, in my recollection, around about this time.

Q. I now show you a letter dated September 25, 1935, written by Mr. Cooley to you. Did you receive this letter?

(The witness examined the letter.) 3405

A. Yes, I did.

By Mr. Thiess:

Q. Did you upon the receipt of this letter of September 25, 1935, take this matter of a loan up with Mr. Morgan Kaufman? A. I think that I must have done so, but I do not recall just distinctly what I did upon receiving this, but I am sure that I began to take it up with him by this time, or before this time, which is September 25, 1935.

Q. Well, now, in this letter Mr. Cooley refers to the danger of losing the fruit crop unless the loan was closed immediately. A. Yes.

Q. Did you advise Mr. Kaufman about that? A. Not to my recollection.

Q. You never advised him that—— A. I won't say that I did not, but I won't say that I did. I do not have any recollection about it.

Q. So you don't remember discussing this letter with Mr. Kaufman at all? A. That is, as to the fruit, or the possibility of losing——

3407

Q. Losing the fruit crop. A. I do not recall that.

Q. In view of that letter, did you ask Mr. Kaufman whether he could make the loan immediately? A. I do not recall, but when I asked Mr. Kaufman about it, told him what I thought about the property and what—that I had seen it, and so forth, he said that he would consider it—and I thought by that he would make the loan—if the value was as I thought it was, and the title was good.

Q. Well, now, my question specifically, Judge Davis, was that in view of the information in this letter of September 25, 1935, in which you were advised by Mr. Cooley that Mr. Stokley stood a chance of losing that year's fruit crop, did

3408

you take it up with Mr. Kaufman and suggest that this loan should be hurried along? A. I do not recall doing that, saying that it should be hurried along. I do not recall that. I might or might not have done it, but I do not recall it.

Q. Now, I show you a telegram dated October 3, 1935, contained in Amici Exhibit 109. Did you advise Morgan Kaufman of the facts contained in this telegram, namely, that the town officials were demanding a show-down at once on the Stokley loan?

(The witness examined the telegram.)

A. I don't recall whether I did, Mr. Thiess. I was trying as best I could to help Stokley save his life's earnings, and

it might be that I told him this, or it might not. I do not recall just what I did pursuant to this telegram.

By Mr. Thiess:

Q. And, of course, under those circumstances you have no recollection of discussing this matter with Mr. Kaufman, or what he might have said to you about the loan, about making the loan? A. About hurrying up?

Q. Yes. A. No, I do not. He said at some time—I think it was when I first spoke to him—if Stokley was up here he would talk with him and get as much information as he 3410
could from him, supplementing what I had told him and——

Q. Well——

Mr. Harris: Let him finish.

By Mr. Harris:

Q. Did you finish, Judge Davis?

Mr. Thiess: go ahead, finish your statement, Judge. I didn't want to interrupt you.

A. (Continued)—and if he reached the conclusion that the value was there and the title was good, that he would be inclined to make the loan—or words to that effect. 3411

By Mr. Thiess:

Q. At the time that you received this telegram of October 3, 1935, had you been assured by Morgan Kaufman that the money would be available?

(The telegram was shown to the witness.)

Mr. Harris: What are you showing him now?

Mr. Thiess: What?

Mr. Harris: You are showing a subsequent telegram?

Mr. Thiess: No, I am showing that same telegram.

The Witness: No, October 3rd.

I might have been; at least, whether assured by him that it would be available, in my own mind I thought it would be available if he reached the conclusion that it was—that the title was good and the value was there, as I was sure in my mind that it was.

By Mr. Thiess:

Q. But you say—I don't quite understand what you
3413 mean by that; does that mean that you just reached this mental deduction, or that Mr. Kaufman had assured you that you were going to get the money? A. No, I think that he had not in so many words assured me that I was going to —that Stokley was going to get the money, but I thought he had assured me that if he reached the conclusion that the value was as I thought it was and that the title was good, that he would get the money, and I thought the title was good and that the value was there, and in my mind I thought that was practical assurance.

Q. Now, when you received this wire of October 3, 1935, did you ascertain from Mr. Kaufman whether he was satisfied to go ahead and make the loan, the town demanding a
3414 show-down?

Mr. Harris: That is the sixth time you asked that specific question.

A. I do not think that I obtained any more information from him than I have stated, what my conclusion was.

By Mr. Thiess:

Q. Now,—— A. I do not think that he would make the loan until he had seen and talked with Stokley.

Q. Now, I show you a telegram marked Amici Exhibit

83, from you to Mr. Cooley. Who was the party referred to in that telegram?

(The witness examined the telegram.)

A. This refers, in my recollection, to Morgan Kaufman.

By Mr. Thiess:

Q. So that—— A. Because no one else gave me what I thought was an assurance that the money would be forthcoming and the investment made.

3416

Q. When and where did you finally obtain the information from Mr. Kaufman that he was ready to make the loan? A. I think that the time where he definitely said he would make the loan, as I understood it, was after he had met and talked with Mr. Stokley, in my chambers.

Q. And how was this arrangement for Mr. Stokley meeting Mr. Kaufman in your chambers in Trenton arranged? Did you arrange that? A. I think that I had some word in some way that Mr. Stokley would come up to my chambers or visit me at a certain time. As I understand it, he was down at Norfolk at that time and I think he phoned to me. I am not sure about that, but I had information, and as I recall it I phoned to Mr. Kaufman and told him he would be there, in my chambers, at a certain time, and asked him if he would come down and meet him.

3417

Q. So, as I understand you, Stokley called you that he would be in your chambers, and then you called Kaufman to ask him to come down? A. Stokley, or his son, or somebody—I got information that he would be there. He has two or three sons in Norfolk, Virginia, or Portsmouth, which is across the river, it is all Norfolk, and he visits them very frequently, and my recollection is he was there visiting them at that time, and came on up.

Q. Well, let me ask you, Judge Davis, are you quite sure that Stokley called you, that you didn't call him to come up? A. No, I wouldn't know he was there at Norfolk.

Q. Well, you are sure that he was in Norfolk? A. I think he was, because he left and went back to Norfolk, and I think he was there. Now, I might have written to him before, telling him to come up, about that I am not quite sure, but if I did I am sure he stopped in Norfolk and came on up, but he went back to Norfolk. Anyway, I had information that he would be at my office at a certain time.

3419 Q. Well, there is no correspondence, is there, that you had written him to come up, that you know of, before this meeting? A. I do not recall. If so, I think it is in these letters, Mr. Thiess, or telegrams.

Q. Now, Judge Davis, when Mr. Stokley and Mr. Kaufman met at your chambers at Trenton, did they meet in your office? A. Yes,—you mean by my office, in the room that I occupied?

Q. Yes. A. Yes.

Q. And were you present at the time when Mr. Kaufman and Mr. Stokley were discussing the terms of the loan in your office? A. No, sir.

3420 Q. You never heard them discuss the terms of the loan? A. No, sir, they met in my—I would say—individual chamber, in my chambers; generally, I occupied the corner room, next adjoining that was my secretary's room, and adjoining her room was the reception room which people entered, and beyond that was the library, and I introduced them and they talked a few minutes, and I told them that they might go into my library and discuss the matter, saying to Mr. Kaufman, in substance, when they were ready to go out, "Now, Mr. Kaufman, you may rely upon the truth of any statements that Mr. Stokley makes regarding his properties."

Q. And it is your recollection that the agreement was not discussed at all while you and Mr. Stokley were in your chambers? A. Mr. Stokley and I?

Q. And Mr. Kaufman. A. No, not in my presence.

Q. In your presence? A. Yes.

Q. Now, when Mr. Stokley and Mr. Kaufman came into your chambers did you call in your clerk, Mr. Lord? A. Later, I did.

Q. You didn't—when did you call him in? A. Well, after we had talked a few minutes and I—I had first introduced them, and maybe talked a few minutes about general subjects, and so forth.

Q. And—— A. And then I called in—I buzzed for Mr. Lord, who was then my law clerk, and he came in.

Q. And what did you tell Mr. Lord? A. To take them 3422
over into the other room.

Q. And you are quite certain that the details of this arrangement were not discussed in any way when Mr. Lord was in your chambers, in your presence? A. No.

Q. What do you mean,—— A. I mean, I am certain that it was not discussed.

Q. Now, were you advised respecting the terms of the loan that had been agreed upon by Mr. Stokley and Kaufman? A. I don't quite understand that, Mr. Thiess.

Q. Were you advised of the terms—— A. When?

Q. —that Mr. Stokley and Mr. Kaufman—— A. When?

Q. At the time they made this agreement. A. I wasn't 3423
advised at that time.

Q. Well, when were you advised of the terms? A. I learned sometime afterwards, the terms.

Q. How long afterwards would you say? A. It was sometime before three weeks.

Q. Would it have been within the next couple of days? Could it have been? A. I don't think it was as early as that.

Q. Well, did you see a rough draft of the agreement the same day it was typed? A. No, sir.

Q. Did you ever see that? A. A rough draft?

Q. Yes, of the agreement, of the first draft of the agreement. A. Well, I do not recall that I did.

Q. You don't remember? You might have and you might not have? A. I do not recall. I don't think I saw it.

Mr. Harris: In his recollection, he says he doesn't recall that he did. He doesn't say, "I have no recollection"; his recollection is that he did not, as I understand the testimony.

By Mr. Thiess:

A. Is that it? A. I don't remember seeing that.

3425 Q. Did either Mr. Stokley or Mr. Kaufman ask you whether it would be satisfactory for your clerk, Mr. Lord, to assist in the preparation of the agreement? A. Not while it was going on. They did not come back into my chambers where I was until the agreement had been dictated.

Q. And when did you first learn that Mr. Lord helped in the dictation of the agreement? A. That I do not recall.

Q. Would it have been within that day or the next day, or don't you recall? A. I do not recall that, Mr. Thiess.

Q. Do you know who made the arrangements for Mr. Lord to go to Mount Dora with Mr. Kaufman's cashier's check to close the deal? A. Only by hearsay. I understand —I can tell you what my understanding is—my understand-
3426 ing was that when they were together, those three, in my library, that Mr. Stokley stated he had a lawyer down there, or there was a lawyer who would look after this, and that Mr. Kaufman demurred and said that he would rather have Mr. Lord look after it, and he asked Mr. Lord if he would go, as I understand it, and he said, in substance, that he would, and Stokley—and Stokley said he would pay his expenses if he went.

Q. Well, were you consulted by either Mr. Kaufman or Mr. Lord for permission for Mr. Lord to go—— A. Not——

Q. —to Mount Dora? A. Not while they were there together.

Q. Well, when were you asked about that? A. Well, I imagine I was asked that day, but I don't recall.

Q. Now, —— A. Mr. Lord, by the way, had not had a vacation for, I think, two years, and I was perfectly willing for him to go and take a few days down there, and thought it would do him good.

Q. Well, as I understand it, it was your idea, was it not, that Mr. Lord should hurry back as fast as possible? A. Well, I wanted him to come back when he had gotten the the matter attended to for which he had gone down there. I did not want him to lie around down there after he had done the job. 3428

Q. Well, do you remember advising that they should expedite this matter quite rapidly, because you were pressed for work and wanted Mr. Lord to come right back? A. I think I did.

Q. Well, he didn't go down for much of a vacation, then, did he, Judge Davis? A. Well, riding down on the train, sitting around there a day or two, sniffing the orange blossoms, walking around among the flowers and all that, and coming back, that would be a nice little vacation for a fellow who hadn't had any.

Mr. Harris: I am glad your verb was "sniffing" and not "drinking" orange blossoms. 3429

The Witness: Well, drinking orange juice.

Mr. Harris: Orange blossoms.

The Witness: We always kept plenty of it at home.

By Mr. Thiess:

Q. Do you know, or did you discuss with Mr. Lord or Mr. Kaufman the purpose for sending Mr. Lord to Mount Dora to close the deal? What was he to do down there, do you remember? A. Well, I do not recall discussing in detail what he should do down there, but my general knowledge would lead me to know what he was to do down there. He

was to take the money down, he was to see that the title insurance policy was all right and that the property was conveyed to Kaufman, and whatever else was necessary to carry out their agreement.

Q. Now, did you see or communicate with Mr. Kaufman in connection with this agreement after October 24, 1935? A. I do not recall.

Q. You have no recollection? A. I do not recall it at this time. I might or might not have done it.

Q. Mr. Kaufman left your office for New York right after they had dictated this agreement? A. Soon after, I
3431 do not recall just how soon.

Q. Do you know whether—— A. Or how late.

Q. Do you know whether he left that day? A. Oh, I think he did. He didn't stay in my office all night.

Q. Well, I mean, do you know whether he left town that day and went back to New York? A. Well, I didn't know where he went, he left my office, but where he went I do not know. He might have said to me he was going to New York, and might have said he was going to Philadelphia. I do not now recall where he went, if I ever knew.

(Discussion off the record.)

By Mr. Thiess:

3432

Q. Now, isn't it a fact, Judge Davis, that as of October 24, 1935 it was your understanding, when the terms of the loan were agreed upon in your chambers, that the sum of ten thousand was the amount required to redeem the properties free and clear of all encumbrances? A. That is what I thought it contained.

Q. And isn't it also a fact that it was Mr. Kaufman's understanding at the time that he closed with Mr. Stokley that ten thousand was all that was required to redeem the properties free and clear of all encumbrances,——

Mr. Harris: Well,——

By Mr. Thiess:

Q. —as far as you know?

Mr. Harris: How does he know? A. I do not know what his understanding was, but he told me that that was all that he would put into the property.

By Mr. Thiess:

Q. When did Mr. Kaufman tell you that that was all he would put in the property, before they had the meeting 3434
in—— A. Yes, he had said he wouldn't put more than ten thousand into the property.

Q. Judge Davis, I show you a letter dated October 25, 1935, from you to Thomas H. Cooley.

Mr. Harris: Will you identify it?

Mr. Thiess: That is identified as Amici Exhibit 85.

By Mr. Thiess:

Q. Do you recognize that letter? Is that your letter?

(The witness examined the letter.)

A. Yes. 3435

By Mr. Thiess:

Q. Now, this is a letter, is it not, Judge Davis, that was dictated the evening of the completion of the agreement between Stokley and Kaufman, by you? A. Well, this is the 25th, I imagine perhaps it might have been dictated that day or the day before.

Q. Now,—— A. I think, if I am not mistaken, it was the 24th that they met in my chambers.

Mr. Harris: That is right.

Mr. Thiess: That is right. A. (Continued) And I am inclined to think that that letter was dictated on the same day but not written until——

By Mr. Thiess:

Q. Not sent, that is correct.

By Mr. Harris:

Q. Not transcribed until the next day? A. I think probably.

3437

By Mr. Thiess:

Q. Now, on that same day, October 24, 1935, did you see this telegram identified as Amici Exhibit 84?

(The witness examined the telegram.)

Mr. Harris: Well, he probably didn't receive it until the next day. Was it a night letter?

Mr. Thiess: Next morning.

Mr. Harris: It seems to have been sent on the 24th.

Mr. Thiess: He got it the next morning very likely, sent that day.

3438 A. Yes, I received that.

By Mr. Thiess:

Q. The next morning. A. Yes, on the 25th.

Q. Yes, and after you received this telegram, Amici Exhibit 84, did you then write a letter to Mr. Cooley, identified as Amici Exhibit 86, on the 25th—— A. Yes, I did.

Q. —of October,—— A. Yes.

Q. —1935?

(The letter was shown to the witness.)

By Mr. Thiess:

Q. Now, did you upon receipt of Mr. Cooley's telegram, Amici Exhibit 84, inform Mr. Kaufman of the fact that the redemption in the amount of ten thousand dollars would be subject to the county taxes, in the sum of twenty-seven hundred dollars? A. You mean then and there?

Q. Yes. A. I don't think I did right at that time.

Q. How soon afterwards did you do that? A. I don't know, but I informed him sometime after that, I informed him that they were adding around three thousand dollars to the price.

3440 Q. And isn't it a fact that the clause regarding the twenty-seven hundred dollars taxes which is contained in the agreement could not have been in the agreement as originally dictated on October 24th?

Mr. Harris: Now, just a minute, I object to your asking whether it could have been or not, and I object to asking whether it was or not unless he knows. Now, he can't speculate. The witnesses who were present have testified, and if the Judge knows, then, of course, it is proper, but to ask him whether he could have known it or not, contrary to the fact that was testified to here, is improper. I object to it.

3441 The Master: Will you read the question, Mr. Rodebaugh, please?

(The question was repeated by the reporter as follows:

"Q. And isn't it a fact that the clause regarding the twenty-seven hundred dollars taxes which is contained in the agreement could not have been in the agreement as originally dictated on October 24th?")

Mr. Harris: "could not have been"—the testimony is that it was in the agreement.

3442 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Thiess: Let the Master rule.

The Master: I thing that is a matter of argument.

By Mr. Thiess:

Q. Well, I show you——

The Master: I suppose what you really have in mind is whether he knew prior to getting this telegram that—where is the telegram?—prior to getting the telegram of October 24th that Stokley was to assume the taxes.

3443 Mr. Harris: Or that the conveyance was to be made subject to the twenty-seven hundred dollars.

The Master: Yes.

By Mr. Thiess:

Q. Can you answer that question? A. Yes, I think I can.

Q. Well, will you answer it? A. My understanding was at the first, from Stokley, that the Town had tentatively agreed to make the compromise for seventy-five hundred dollars. Then I learned subsequently that it was ten thousand dollars, and that, I thought, embraced everything. Cooley had written me that there were some county taxes to
3444 be added to that, which I thought was inconsiderable, and I thought the terms of the agreement when written referred only to the ten thousand dollars. I didn't see it, but I inferred that from what my understanding was at that time, and so I wrote right away to Mr. Cooley the letter which they have shown me here, stating that that was not my understanding. I thought at that time that when they learned that Stokley could get the money they were raising the price on him and taking advantage of him because he could get the money. I hadn't looked at the record, but I thought that they had raised the price on him, and I did not like it,

and so I wrote Cooley the letter telling him my understanding, telling him in this letter that I did not so interpret a former letter to me that he had written, and quoted the letter to him. I wrote Stokley that same day and sent him a copy of Cooley's letter.

I told Cooley that I thought Stokley would be just as much surprised as I was, or words to that effect.

Stokley wrote back, and didn't say whether he was surprised or whether he was not surprised, but Stokley said that, "I am going to furnish additional security, my Pet Grove, and my five houses, which would cover the taxes."

I thought then—I did not do what I should have done, 3446
have gone to the agreement and looked at it and seen what it contained exactly, but I still was under the impression that it contained only the ten thousand dollars which I had been led to understand was the price, and so some time after that, I don't know when or how, but about three or four weeks after that I wrote another letter, I think it was the time that Mr. Lord went down. In the meantime I had gotten from somebody that the agreement as it was then contained a provision for additional security, the five houses, Pet Grove, and cement block house. I thought that they had been added in the agreement, that somebody, Mr. Lord or somebody, had added that to the agreement in response to 3447
what Stokley had written, and so I spoke to him, when I wrote to Stokley that, "The contract or agreement is just as it was when you were here with the exception of the change, of this additional security", and I so testified. I thought that Mr. Lord had done it, I thought that Mr. Lord was present when I wrote to him. He testified and said that he was not, and doubtless he was right, but I thought it contained that.

I am satisfied now, after hearing Mr. Lord testify, Mr. Stokley testify, and Mr. Kaufman testify, that it was in the original agreement as it was first written.

Q. Did you verify whether it was in the agreement as first written at the time that you got these letters from Cooley, and the telegram, asking for this additional security?

Mr. Harris: Now, just a moment,——

A. I don't think——

Mr. Harris: Now, just a moment, I object to that. He has already answered that. Why all this repetition? He said he made a mistake in not doing it, he
3449 should have done it, but he didn't. Now, that is right in the record, Mr. Master.

By Mr. Thicss:

Q. The agreement was in your office, was it not? A. Yes, I think it was, but whether it had been written when I got that letter or not, I do not know—when I got that telegram. I have my doubts that it had been written.

By the Master:

Q. Did Mr. Lord see the telegram, do you know? A. I do
3450 not know, Mr. White, whether he did or not.

Q. You think the agreement had been dictated but not transcribed, perhaps? A. That is probably correct, but I was so sure that the agreement contained only the ten thousand dollars that I assumed it as a fact.

By Mr. Thicss:

Q. And did you communicate with Mr. Kaufman at all about this matter? A. About this? Some time later, I saw Mr. Kaufman, and I said to Mr. Kaufman, "Why, they are adding about three thousand dollars to the original price", not—thinking the original price which he understood was

ten thousand dollars only, and he seemed rather disturbed about it, but now I think that he misunderstood me, thinking that I understood that the three thousand dollars was added to the ten thousand dollars plus the taxes, which would make it about sixteen thousand dollars, and he seemed rather disturbed about the thing and made some remark that, if they are going to dicker like that, he wouldn't go along.

Q. Well, when was that remark made by Mr. Kaufman? A. Oh, whenever I saw him. I sent a letter either to Mr. Cooley or to Mr. Stokley to that effect, and it was right about that time. I do not know the exact time. If you have the letter, Mr. Thiess, you will see about the date of it. 3452

Q. Now, referring to this letter of October 25, the third paragraph from the last there, you say:

> "Mr. Stokley may be able to raise the $13,000 from some other source but frankly Mr. Kaufman does not want to take the property unless it is free and clear of taxes and he is unwilling to put more than $10,000 into it."

A. Yes, sir.

Q. Now, after the receipt of this wire did you discuss that with Mr. Kaufman, prior to the time that you wrote this 3453 letter? A. No, sir.

Q. What caused you to put that statement in the letter? A. That he wouldn't put more than ten thousand in it?

Q. Yes, and that—— A. Because he had so stated to me.

Q. And you didn't take up this matter with him, about the fact—— A. Not at that time.

Q. —that the Town—— A. Not at that time. I took it up with Cooley and Stokley, thinking that they were putting something over on Stokley.

Q. Now, I refer you to this letter of November 5, 1935, from you to Stokley,——

3454 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Harris: Is that in any other list? We haven't got it anywhere.

Mr. Thiess: No.

By Mr. Thiess:

Q. —where you make the statement:
"Mr. Kaufman disturbed by Mr. Cooley's telegram. Can you compromise taxes with Town."

—now, had you taken this matter of the telegram of Amici
3455 Exhibit 84, October 24, up with Mr. Kaufman before you wrote this letter of November 5th? A. This telegram.

Mr. Harris: That is a telegram of November 5th.

Mr. Thiess: Telegram.

A. (Continued) I told him about this telegram when they were raising the price about three thousand dollars.

By Mr. Thiess:

Q. Well, Judge Davis, if Mr. Kaufman knew all about it and it had been taken care of in the agreement, what would be the purpose of saying that Mr. Kaufman was dis-
3456 turbed by Cooley's telegram? It had all been taken care of if this clause was in the agreement originally. A. No, not at all, Mr. Kaufman understood that Stokley would have to pay thirteen hundred dollars——

Mr. Harris: Thirteen thousand.

A. (Continued) Twelve thousand, seven hundred dollars. I didn't so understand. I said, "They are adding about three thousand dollars to the price upon which they have agreed", and he thought that I understood that—that they had taken care of the taxes in the agreement, and I did not so understand. He thought when I told him that they were adding

that to the price, they were adding it to the twelve thousand, seven hundred dollars.

By Mr. Thiess:

Q. But the agreement with this amended clause in it says that Stokley would take care of it by February 20th. A. Yes, but I hadn't seen the agreement. I didn't know at that time that that was in the agreement.

Q. Yes, but this wire says, "Mr. Kaufman disturbed by Mr. Cooley's telegram." A. Exactly.

Q. Well, if Mr. Kaufman knew that this was in the agreement, how would he have been disturbed? It was all taken care of. A. When I said they are adding so much to the price, he thought they were adding it to the twelve thousand, seven hundred dollars. 3458

Q. But as I understood you, then, as a result of listening to their testimony, they knew all about this and they had taken care of it in the agreement—— A. Exactly.

Q. —as originally drafted. A. Exactly.

Mr. Harris: Certainly, but they didn't know about the extra three the Judge told about.

Mr. Thiess: There was no extra three, there was twenty-seven hundred dollars. When he says three thousand, he is talking about it in round numbers. 3459

Mr. Harris: But the Judge testified he thought they were trying to jack up the price and he told Kaufman they were trying to add about three thousand dollars to the price, Kaufman knew it was twelve, seven, and that made fifteen, seven, in his mind. The Judge has said that three or four times.

By Mr. Thiess:

Q. Was it your understanding—and I refer you now to the letter of October 25th—that where you say to Cooley:

"Your telegram tells me that there is, in addition to the $10,000 to be raised by Mr. Stokley, $2,700 to be raised to make the title clear. This was a surprise to me, and I am not sure it was a surprise to him,—

Mr. Harris: "as I am sure."

By Mr. Thiess:

Q. — " . . . as I am sure it was a surprise to him, . . ." now, didn't you know at that time that that twenty-seven hundred dollars was for taxes? A. Yes, I knew what Cooley

3461 said.

Q. Well, didn't you know it was for taxes? A. I knew what Cooley said, that it was for taxes.

Q. All right, well, then, you didn't—then you knew, did you not, that the additional money that was required in this agreement was to take care of those taxes, did you not? A. But I didn't know the additional money required was put in the agreement.

Mr. Harris: That is it.

A. (Continued) I thought it was ten thousand dollars. Cooley had said to me—Stokley never told me anything

3462 about the extra taxes, Stokley told me ten thousand dollars was the price, and I thought that was the price, but Cooley said in his telegrams and in his letters that ten thousand dollars was the price except some county taxes.

By the Master:

Q. Well, Judge Davis, when you say in your letter that Mr. Kaufman was disturbed by Cooley's telegram of the 24th, had you shown him that telegram? A. No, sir, I didn't show it to him.

Q. You hadn't shown it to him? A. No, sir, I didn't show it, I simply told him. I met him here in Philadelphia,

as I recall it, and said, "Kaufman, they are adding or propose to add about three thousand dollars to the price."

Q. Then your thought is that you and Mr. Kaufman misunderstood each other? A. Exactly.

Mr. Harris: Exactly, that was the whole thing.

A. (Continued) And Kaufman said, "Well, if they are doing that I won't go along with any such dickering and I will throw the whole thing overboard," or words to that effect.

Mr. Harris: And the Judge was thinking about three thousand plus ten; Kaufman was thinking about 3464
three thousand plus twelve, seven.

The Master: Well, I don't think it is very important.

Mr. Harris: I don't, either.

The Master: I think the facts have been developed quite thoroughly.

By Mr. Thiess:

Q. Just one more question. Judge Davis, is this the first time you ever made this explanation you are now making of this particular incidence? A. Yes, when I testified before I thought Mr. Lord or somebody had changed the agreement 3465
in that regard, but after hearing them testify, after testifying myself and hearing them testify, and reading the letters and getting all the information I could, I think that I was mistaken and that was contained in the original agreement. Mr. Cooley never answered that letter that I wrote to him, and when Stokley came back he didn't say he was surprised, but said, "I will give additional security," and so when they went down there—and I don't know on what authority and how they came to do that—my information is when the deed was conveyed from Stokley and his wife to Kaufman, that the additional security, instead of adding five houses, they

added nine houses. I don't know how they came to do that. Nine houses were in the deed. I didn't know that until, oh, recently.

Mr. Harris: I didn't know it until this minute.

The Witness: They had nine houses in the deed, and how they came to do that I don't know.

By Mr. Thiess:

Q. Judge Davis, haven't you previously testified that you never saw this agreement until after the investigation
3467 started. A. I probably did.

Q. And now you are testifying that you did see it? A. No, I didn't so testify to that.

Mr. Harris: No.

By Mr. Thiess:

Q. You said within three weeks after it had been written, as I understood it. A. I learned, I said, that that was in it.

Q. Well, I understood you to say that you had seen the agreement. A. No, I didn't say that.

Q. Well, the record will show. A. I didn't mean to.

3468 Q. Well, is it still your position that you never saw a copy of this agreement, notwithstanding all this difficulty—— A. Yes.

Q. —that they had about the clauses,—— A. Yes.

Q. —until after this investigation was started. A. Yes, Mr. Lord took the agreement, both agreements—I guess one was a copy—to Florida and had it executed there and came back, and my information is that he left one down at Florida and sent the other up to Mr. Kaufman.

Q. And—— A. And I don't think that I saw that agreement until it was shown to me on the stand. I may be mistaken, but that is my recollection.

Q. And as I understood it, also, you said that you didn't know what the provisions of the agreement were until you took the stand? A. I think that the provisions—no, I didn't quite say that.

Q. Well, what did you say? A. I thought I said that the agreement as originally drawn provided for the ten thousand dollars only, but I had learned from some other source subsequently that it contained the provision for the addition of this other security, Pet Grove, the cement block house, and five houses. I thought it had been changed in that respect, when I learned that that provision—as I thought, 3470
as I learned subsequently, that the deed had been changed, or they put in more houses in the deed than it was agreed upon in the agreement.

Q. And the other source that you learned this from was who? A. I don't recall who. I don't recall from whom I learned it, whether I learned it from Mr. Lord or whether from Mr. Kaufman, or from whom it was.

Q. Do you know when you learned it. A. No, I do not recall just now when I learned it, but I learned it sometime before I wrote that letter.

Q. What letter? A. About three weeks afterwards, saying when Mr. Lord went down—saying the agreement is just as it was when you were here, with the exception of the 3471
addition of this additional security.

Q. You learned it after that? A. No.

Q. But you don't know when? A. I learned it before that.

Q. Oh, before that? A. Yes, I learned that from somebody. I don't know whether it was Mr. Lord or from whom it was. They told me that they had put in—that the agreement contained a provision to—for security for these additional taxes.

Q. Well, now, when did you, as you now recollect, your present recollection, when did you first learn of the provisions of this agreement? A. For the Pet Grove and the——

Q. No, any of the provisions of the agreement,—— A. Well, as I understand it——

Q. —as dictated that day. A. As—I may be mistaken, now,—as I understand it, and as I understood it when I wrote that letter, when Mr. Lord was going down, that the agreement provides, as it stands today, and as I think it stood in the original, at the beginning, provides for the ten thousand for the conveyance to Kaufman of the property which was held by the Town, and then by Stokley and his wife of a grove called the Pet Grove, and a cement block
3473 house, and five additional houses, and I learned that some time between the time Stokley was there and the time I wrote that letter sending Lord down, and I thought it had been changed, and I thought Lord had changed it, and I think I testified to that, or words to that effect, but I think now I was mistaken, Mr. Thiess, and it was the result of not doing what a lawyer should have done, Mr. White, and gone and seen the thing itself, and see what it contained, but I was so sure that it contained only the ten thousand that Stokley had told me about, why, I at once went up in the air, when they said they wanted twenty-seven hundred dollars more, I said, they are putting it over on this old man, and I didn't like it.

3474 Q. Well, now, that is something, this story you now tell about is something that has come to your mind subsequent to the trial of these cases? A. Yes, it is an explanation of the facts which I think were true and which I discovered after hearing the testimony.

(Discussion off the record.)

(Adjourned until Friday, October 30, 1942, at ten o'clock A. M., Eastern War Time.)

J. Warren Davis—For Amici Curiae—Direct 3475

Meeting held before Thomas Raeburn White, Esq., Master, at the offices of White and Staples, Esqs., 1930 Land Title Building, Philadelphia, Pa., on Friday, October 30, 1942, at 10:00 o'clock A. M., Eastern War Time.

Present:

THOMAS RAEBURN WHITE, Esq., *Master.*

J. BERNHARD THIESS, Esq., (77 West Washington Street, Chicago, Illinois). 3476

THORLEY VON HOLST, Esq., (77 West Washington Street, Chicago, Illinois).
Amici Curiae.

ROBERT W. POORE, Esq., (77 West Washington Street, Chicago, Illinois).

SIDNEY NEUMAN, Esq., (77 West Washington Street, Chicago, Illinois).
Counsel accompanying *Amici Curiae.*

W. P. Z. GERMAN, Esq.

RALPH S. HARRIS, Esq., (100 Broadway, New York, N. Y.). 3477

EDWARD J. O'MARA, Esq., (15 Exchange Place, Jersey City, New Jersey).

JOHN R. MCCULLOUGH, Esq., (100 Broadway, New York, N. Y.).
Representing Universal Oil Products Company.

Evidence on Behalf of Amici Curiae (Continued)

3478 *J. Warren Davis—For Amici Curiae—Direct*

J. WARREN DAVIS, recalled.

Direct Examination (Continued)

Mr. von Holst: I should like to file this original subpoena on Stokley. That has been returned.

The Master: Yes, very well.

Go ahead, Mr. Thiess.

By Mr. Thiess:

Q. All right, Judge Davis, I direct your attention to the
3479 first three sentences of your letter to Stokley dated November 14, 1935,——

Mr. Harris: Contained in Exhibit 109?

Mr. Thiess: Yes.

By Mr. Thiess:

Q. —reading as follows:

"Your telegram informing me that the taxes were $2700 and would be paid on February 20th, was received. Also that you would secure Mr. Kaufman by a mortgage or conveyance to him of five houses in addition to those covered in the agreement dictated
3480 when you were here.

"I saw Mr. Kaufman last night in Philadelphia and told him about the matter."

Now, Judge Davis, I want to know whether or not when you saw Mr. Kaufman that night you told him that the County and State taxes were twenty-seven hundred dollars and that Stokley had said that he would pay them on February 20th. A. I do not know whether this was the date to which I referred in a previous telegram or not.

Q. Well, can you answer? A. I say, I do not know whether this was the date to which I referred in a previous telegram to Stokley or not.

Q. Well, the question is whether you saw Mr. Kaufman that night.

Mr. Harris: You mean the night before? He says "last night".

A. Why, I assume that I did. I have no independent recollection of it.

By Mr. Theiss:

Q. And told him that the County and State taxes were twenty-seven hundred dollars and that Stokley had said 3482
that he would pay them on February 20th? A. Why, I assume that I told him that.

Q. Yes. A. Because I have so stated in my letter.

Q. And did you not also tell Mr. Kaufman that night that Mr. Stokley would secure him, Mr. Kaufman, by a mortgage or conveyance to him of five houses in addition to the cement building and the Pet Grove? A. I presume I did, because I think it is substantially as you have read.

Q. Now, Judge Davis, subsequent to the ten thousand dollar loan made by Mr. Kaufman to your cousin Stokley, you loaned your cousin Stokley four thousand dollars? A. Yes.

Q. When did you make this loan? A. Whatever the 3483
dates are that are recorded; I think it was in March of 1936.

That is right, that is correct. Did your cousin Stokley ask you for a loan on his Florida property? A. Yes, sure, otherwise I wouldn't have made it.

Q. Will you kindly state to the best of your present recollection the substance of the conversation when you discussed this matter with him? A. Well, as I recall it—see, that has been six or eight years ago—as I recall it, he told me that he had other indebtedness in addition to the indebtedness which Mr. Kaufman had helped him liquidate, on other property, and that he could compromise, I think, about eight

thousand dollars for four thousand, and that this was a valuable property, worth at least eight thousand dollars, and asked me if I couldn't get some money for him, to help him to make that compromise and save that property.

Q. Now, the purpose—— A. That is in substance; I do not pretend to quote the language, that is in substance as I recall it.

Q. Now, the purpose of this compromise was to wipe out the claims of the Eustis Company, was it not? A. Some corporation, the name of which I have forgotten now, that had the mortgage—I think it was a mortgage, I am not sure
3485 about that, a lien of some kind.

Q. And subsequent to the time that your cousin Stokley approached you on this four thousand dollar loan did you discuss this matter with anybody connected with the Eustis Fruit Packing Company? A. I discussed it one evening, and I presume it was in '36, the time we were, Stokley and I were talking about it, with Stokley and a gentleman who was representing that corporation, as I understood it.

Q. Was that a Mr. Conklin? A. I think that was his name.

Mr. Harris: What was the name?

Mr. Thiess: Conklin, C-o-n-k-l-i-n.

3486

By Mr. Thiess:

Q. Do you remember where, at what time you met or contacted Mr. Conklin? A. I went over, I think it was to Mr. Conklin's house, one evening with Mr. Stokley, as I recall it.

Q. Judge Davis, I show you a telegram, day letter, dated February 19, 1936,——

Mr. Harris: What number is that, Mr. Thiess?

Mr. Neuman: 128.

Mr. Thiess: 128, I think. Yes, it is 128.

By Mr. Thiess:

Q. —from J. Warren Davis to Mr. Charles L. Stokley, and ask you whether you can identify that telegram and whether you sent it.

(The witness examined the telegram.)

A. Yes, I think this is my telegram.

May I make an interpolation here, Mr. Thiess, to explain something?

3488

Mr. Thiess: Yes.

The Witness: It has nothing to do with this telegram. I learned, or discovered, last night that my secretary was down with me two years, rather than one year. They were 1935 and 1934. You asked me about '35. The letters from Judge Buffington, assigning those cases for opinion, were written on the 18th of January. I think I left for Florida on the 17th, probably after a conference, and I did not receive the letter, of course, until after I reached Florida, because it was sent to Mount Dora, and, therefore, when I left did not know that the opinion in the Root case would be assigned to me, and did not know it until I 3489
was in Florida, and so did not have any of the records with me and did not work on it, and could not have worked on it at that time. And I would not have taken a case of that size, with volumes such as we had there, to Florida with me, and I never did. I took those small cases that did not involve much investigation.

By Mr. Thiess:

Q. There were six volumes of record in this Root case, weren't there? A. Pretty long, I don't remember. I know

there were a good many of them, perhaps several thousand pages.

Q. And the briefs were rather voluminous, were they not? A. Well, perhaps you got permission to make them voluminous. I know we cut down the briefs, at my insistence, under a rule of court, to fifty pages of the argument.

Q. But we got permission, do you remember,—— A. Probably—I don't remember that, but I know if you did have to exceed that, you got permission. That arose in the Chemical Foundation Company, when counsel had about five hundred pages of brief, and generally they could compress
3491 it to fifty, and tell us in substance just all there was to be told. Excuse me for interpolation. I saw that this telegram was sent by this secretary and not by myself, and that was why I thought of it just at the time, and I thought it was due to you to make the explanation. If you had asked me yesterday if she was down more than once, I would have said no, and been sure I was telling you the truth.

By the Master:

Q. May I ask from what point this telegram was sent? A. I think it was sent from Miami, because I was on my way then from Miami up to my home here.

3492 Q. It doesn't appear on the telegram. A. I do not just see here where it was sent from, but I am sure it was sent from Miami, and that was just about a day's drive from Miami up to——

By Mr. Thiess:

Q. I call your attention to a room number down there. Does that refresh your recollection? A. Room 307—I assume that was the room in the Battle Creek Sanitorium. They would generally charge this to your room, so they would know to whom to charge the telegram. That was my recollection.

Mr. Thiess: I wish to offer this telegram of February 19, 1936, from J. Warren Davis to Mr. Charles L. Stokley, as Amici Exhibit 110.

(Photostatic copy of telegram dated February 19, 1936, from J. Warren Davis to Mr. Charles L. Stokley was marked Amici Exhibit 110.)

By Mr. Thiess:

Q. Now, subsequent to sending this telegram, Judge Davis, did you meet with Mr. Conklin? A. Yes, I think I met with him on Saturday night. I am definitely sure it 3494
was not Sunday, and I think we left Mount Dora on Monday.

Q. Can you give the substance of the conversation you had with Mr. Conklin at that time respecting this matter? A. As I recall it, I wanted to know in Mr. Conklin's judgment the value of that property, and to question him on compromise, and I recall very definitely he said it was worth he thought around eight thousand dollars, and if I loaned four thousand dollars on it and was dissatisfied with the loan at any time, he would take the loan.

By the Master:

Q. You say "that property"; what property do you refer 3495
to? A. The property which—in which the corporation represented by him had a mortgage.

Q. Well, was that his home property, or—— A. No, that wasn't his home property, and not the property which was conveyed to Mr. Kaufman, that was other property than that. I think there was a grove in Orange County and a grove partly in Orange County and partly in Lake County, in which Mount Dora is situated.

By Mr. Thiess:

Q. Now, subsequent to your conversation with Mr. Conklin what, if anything, did you do next respecting this four

thousand dollar loan to your cousin Stokley? A. The next thing that I recall was to approach Mr. Ungerleider and ask him for the loan.

Q. Now, at the time that you approached Mr. Ungerleider for this loan it is a fact, is it not, that you had fifty-four hundred dollars on loan to one Mr. Lewis?

The Master: To whom?

Mr. Thiess: Mr. Lewis, David Lewis.

A. No, that is not true.

3497

By Mr. Thiess:

Q. Did you have any loans, any loan to Mr. Lewis at that time? A. I think a thousand dollars.

Q. Had your wife loaned any money to Mr. Lewis at that time? A. Well, I do not know now just when I approached Mr. Ungerleider. I do not recall now just when the loan to Ungerleider was made—I mean by Ungerleider was made to me, and I to Stokley. If I could see that I probably could tell you, if you have the date.

Q. I show you a check under date of March 10, 1936, Samuel Ungerleider to J. W. Davis, in the amount of four
3498 thousand dollars. It is a photostatic copy. A. Yes.

Q. Does that help refresh your recollection?

(The witness examined the check.)

A. At this time the loan to Lewis had not actually been made, but it had been agreed to.

By Mr. Thiess:

Q. What loan are you referring to now? A. I am referring to the loan of Mrs. Davis to Lewis which you asked about.

Q. And that was in the amount of how much? A. Forty-four hundred dollars.

Q. And when was this loan to Mr. Lewis made, do you know? A. The money was taken out of the bank, or Mrs. Davis' safe deposit box here in Philadelphia on March 10th, and was made some time subsequent, that is, handed over to Lewis.

Mr. Harris: Mr. Thiess, you showed the witness a check, photostatic copy of a check.

Mr. Thiess: Yes.

Mr. Harris: Shall we identify that as a check of 3500
Mr. Samuel Ungerleider to J. W. Davis in the sum of $4,000.00, dated March 10, 1936, drawn on The Public National Bank and Trust Company of New York, and certified by it, and endorsed by Mr. Davis to Eustis Packing Company and endorsed to First State Bank of Eustis, Florida, or order, by Eustis Packing Company? May we identify it as that, since you didn't mark it in evidence?

Mr. Thiess: Well, I expect to put this check in evidence.

Mr. Harris: Well, you do identify it as that, anyway, don't you?

Mr. Thiess: Yes. 3501

Mr. Harris: All right.

Mr. Thiess: I wish to offer in evidence the check identified by Judge Davis, under date of March 10, 1936, as Amici Exhibit 111.

Mr. Harris: And that is the one I have just described.

Mr. Thiess: That is right.

(Photostatic copy of check dated March 10, 1936, in the amount of $4,000.00, from Samuel Ungerleider to the order of J. W. Davis was marked Amici Exhibit 111.)

3502 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Judge Davis, at the time that you talk d to Mr. Conklin did you investigate your cousin's property which you were to receive as security for the loan which you were to make to him? A. Only to the extent of going through his groves, which I have done before.

Q. That is, the particular groves that you were to make the loan on? A. Why, I have seen all his groves.

Q. Well, I mean at this particular time, did you go through those particular groves? A. I do not know that I
3503 went through them again at that time.

Q. You didn't identify them? A. But I had been out into those groves many times and eaten oranges from the groves, the very groves in question here.

Q. Well, did you identify the particular groves at the time that you were to make the loan on? A. Well, they were talked about, the groves, Stokley had told me these were the groves, and I think there was some talk about those Orange County groves, the largest one was in Orange County, and the other two pieces, as I recall it, in—partly in Lake County and partly in Orange County. Now, whether or not the mortgage to the Eustis Company covered all of those groves I do not know. I think there were three pieces conveyed to
3504 me, but the principal one which the mortgage of the Eustis Company covered was in Orange County. It might or might not have covered the other two smaller pieces which as I recall it were conveyed to me.

Q. Did you at that time examine the title of the property? A. No.

Q. Did you ever do it? A. No.

Q. Do you know whether Mr. Conklin had prepared the papers for this transfer at that time, and you examined them? A. No—I say no, my recollection is that he did not prepare them. I think Stokley got some Justice, or some fellow who prepared legal papers there to prepare them.

Q. And—— A. That I entrusted to him.

Q. You never checked them, checked the title yourself? A. No, I did not. I asked, as I recall it, Mr. Conklin about the title, and anyway I was satisfied that the title was all right and I was satisfied that Stokley knew and that he would tell me the truth about it.

Q. Did you ever examine the legal title to this property at any other time when you were down in Florida? A. No, I did not.

Q. Never made any examination of any kind? A. I never made any examination, no, sir, because I was satisfied from what Conklin and Stokley had told me that the title was clear. 3506

Q. Now, respecting this four thousand dollar loan to your cousin Stokley, did you contact Mr. Ungerleider to borrow this four thousand dollar loan to make—this four thousand dollars, to make the loan to Mr. Stokley? A. Certainly, I couldn't have borrowed it without contacting him.

Q. Where did you meet him? A. I think I saw him in New York.

Q. And—— A. I am not dead sure about that, whether Trenton or New York, but I think it was New York.

Q. And how long was that prior to the time that you made the loan?. A. I do not know how long it was, but it was after I came from Florida.

Q. You can't fix that date any better? A. No, I cannot. 3507

Q. Do you remember the conversation you had with Mr. Ungerleider at that time? Can you give us the substance of it? A. Yes, the substance of it was that Mr. Stokley had property down there which I was informed and believed was worth around eight thousand dollars and he had a loan on it for somewhere between seven and eight thousand and he could compromise it for four thousand dollars, and I wanted to help him to do it, and I asked him if he would loan me the money.

Q. And was there anybody else there when you had this negotiation—— A. I don't remember.

Q. —with Mr. Ungerleider? A. I don't recall.

3508 *J. Warren Davis—For Amici Curiae—Direct*

By the Master:

Q. That property had not been sold for taxes, had it? A. No, sir, it had not—there was nothing secret about it, there might or might not have been somebody there, I don't know.

By Mr. Thiess:

Q. You say somebody held a mortgage on it for seven or eight thousand dollars? A. The Eustis Packing Company held a mortgage, as I recall the kind of encumbrance that
3509 was on it,——

Q. Yes. A. —for, I think it was eight thousand, it might have been between seven and eight thousand, somewhere around that, and they were willing to compromise this to Stokley—he had had very bad luck, hard luck, Stockley had, he was a respected man and a very industrious gentleman in the community and everybody sympathized with him, and he had patronized this Eustis Packing Company in packing his oranges and all that, and they were willing to make this compromise with him.

Mr. Harris: I think, Your Honor, if counsel on the other side will agree, the mortgage was in the
3510 nature, as I recall seeing a co y of it—I think in the papers you had here—of a fruit picking contract, which gave the Eustis Packing Company the right to the produce from the land.

The Master: I recall that contract, but I didn't understand that was what Judge Davis was speaking of.

Mr. Harris: I think that was what it was.

By Mr. Harris:

Q. Do you recall, Judge Davis? A. I do not recall the nature of the mortgage. I tried my best the other night to

find those releases. I think they are spoken of as releases of mortgage. I tried my best to find them, but couldn't find them.

Mr. Harris: We can agree on that with counsel.

The Witness: They had been handed around from pillar to post, and from attorney to attorney, and from attorney to the Government, and to save my life I couldn't find them, and I don't know where they are.

Mr. Thiess: Have you got those here?

The Witness: Well, anyway, it was an encum- 3512
brance on the land.

Mr. Thiess: Yes.

The Witness: I think it doesn't make any difference, Mr. White, what kind of an encumbrance it was, but it was an encumbrance on the land, which was released when Stokley paid the four thousand dollars.

Mr. Thiess: Would you want to see it, Master?

The Master: Why, I remember the contract.

By the Master:

Q. Did it cover all of Stokley's orange properties or only 3513
certain ones? A. It covered a grove in Orange County. It did not cover all the properties. At that time Kaufman held a good deal of the properties which Stokley had, and this was an orange grove separate and apart, and he had two other small groves, I think, that were conveyed to me as security for this loan.

Mr. Harris: Well, I think the Master is interested in knowing, and so am I, whether this Eustis lien, or right to pick the fruit as security for the loan, whether that contract covered any of the properties which

Mr. Kaufman held as security for the ten thousand. It did not cover any of the Town of Mount Dora properties, I am quite sure, but whether any of the additional security, I don't know.

The Witness: Mr. Harris, I have stated three times that it did not cover any of the property in which Kaufman was interested.

Mr. Thiess: Originally, it did, as we understand it.

Mr. Harris: It did?

3515 Mr. Von Holst: That was the proof that was put in——

The Witness: I think not.

Mr. Van Holst: —with the witness Duncan.

The Witness: Now, I understand that some of these gentlemen say it did, but my information and belief is that it did not.

By Mr. Harris:

Q. Well, it certainly did not cover any of the properties that were acquired from the Town of Mount Dora. The only question is whether it covered any of the additional security that was given Mr. Kaufman. A. No, it did not.

3516

The Master: Well, will you proceed? Perhaps you can develop whatever you have in mind.

Mr. Thiess: All right.

The Witness: May I state right here, in reply to that, the additional security which was received in the nature of grove was what was called a Pet Grove, right back of Stokley's house in Lake County, adjoined his home, or a couple of acres or something of that kind, in Lake County. This was over in Orange County, this grove was, and in addition five houses, and which were enlarged, somehow, for some reason,

to nine houses, in the deed, and the cement block house in Mount Dora, in Lake County.

Mr. Harris: It may have been that the thing that was produced earlier by this man from Florida was some earlier fruit picking agreement which has been superseded by a later one.

Mr. Thiess: I don't believe that.

Mr. Harris: I don't know.

Mr. Thiess: We have got the documents in the record.

The Master: Go ahead.

3518

(Discussion off the record.)

The Witness: As I understand it, the title at that time was clear on Stokley's property that was conveyed to me except the lien which the Eustis Packing Company had, and I think we are wasting a lot of time over something that is immaterial at this time.

By Mr. Thiess:

Q. You never checked that? A. I did not check.

Q. Never made a search of title? A. No, sir, I did not check it, and Stokley has paid all on that loan, the principal of it, but eight or nine hundred dollars, and will pay the balance of it, so it is indifferent to me. 3519

Q. Now, Judge Davis, did you receive this certified check for four thousand dollars, Amici Exhibit 111, from Mr. Ungerleider, in New York?

(Amici Exhibit 111 was shown to the witness.)

A. Yes, that is my recollection.

By Mr. Thiess:

Q. And—— A. My recollection is this, about that, and this is six years ago, and liable to error, that Mrs. Davis and

I came down in the morning, early, and she got out the loan for Lewis, and I went that day, that morning, to New York on the train. Now, I may be mistaken about that, but I think that is what occurred.

Q. And you went to New York to get this check, Amici Exhibit 111? A. I don't know whether to get that check, or for other reasons, and to get the check, I do not recall.

Q. And on that same day did Mrs. Davis get the forty-four hundred out of the savings account? A. That is my recollection, yes, sir.

3521 Q. And on your return to Trenton that evening, or that day, did you write to Stokley the letter of March 10, 1936?

(The letter was shown to the witness.)

A. I think I did.

By Mr. Thiess:

Q. And did you meet Mrs. Davis on that same day to go to the deposit box in Philadelphia and withdraw the four thousand dollars to make the loan to David Lewis? A. I didn't meet her, I went with her.

Q. You went with her?

Mr. Harris: You say four thousand; was that an-
3522 other sum, in addition to the forty-four hundred?

The Witness: No, that is the same.

Mr. Thiess: That is the same four thousand.

Mr. Harris: That is before he went to New York, he testified he did that before he went to New York?

By Mr. Thiess:

Q. You did that before you went to New York? A. That is my recollection, it might have been turned around, but that is my recollection.

Mr. McCullough: What page is that?

Mr. Neuman: 2554.

Mr. McCullough: The second trial?

By Mr. Thiess:

Q. Have you any recollection of sitting in court that very day, Judge Davis? A. No, I haven't.

Q. Well, I would like to call your attention to the record in the second case, page 2554, reading as follows:

"Q. I ask you with respect—I will try and keep my voice up—I ask you with respect to the date March 10, 1936, whether you know whether you were sitting in court on that day? A. Yes.

"Q. Have you examined the records? A. Yes, in 3524
the Clerk's Office.

"Q. And were you sitting there that day? A. Yes, I drove down that morning with Mrs. Davis, went to the Savings Society, Seventh and Walnut, when she withdrew the money at 9:40 in the morning, she gave it to me, I came into Court, she went shopping, and I met her at four o'clock, when the Court was out, and we went home."

Do you remember so testifying? A. I don't remember so testifying, but I have no doubt that I did so testify, and whatever I testified there to, I think I had looked up and that is right. Now, if that is right, and I am not disputing that 3525
it is right, then Mr. Ungerleider got that check to me in some other way—probably sent it down.

Q. Well, the check is dated March 10, 1936, and is certified, and your letter is dated—certified the same day? A. Yes.

Q. And this letter is dated March 10th? A. Yes.

Mr. Harris: His letter to whom?
The Witness: To Stokley.
Mr. Thiess: To Stokley.

3526 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. Enclosing the check? A. Yes.

Mr. Harris: Is that Exhibit 94.
Mr. Thiess: Yes.

By Mr. Thiess:

Q. How would it be possible to get this check to you at that time so it could have been enclosed in that letter if it was sent by Mr. Ungerleider? A. Evidently I couldn't have
3527 been sitting in court during that day and in New York at the same time.

Q. That is right. A. And that check must have gotten to me in some other way.

Q. But you have no recollection as to how it got there? A. I do not recall just how I got this check. It might have been sent down by Mr. Ungerleider, he might have brought it down, or—I don't think Mrs. Davis got it, because I think she went home with me that night, and I dictated that letter, as I recall it, not before I left in the morning to come down to sit in court. I think the records—you may know, Mr. Neuman—show that I was sitting in court that day.

Q. Your testimony is to that effect. A. I think the rec-
3528 ords show that.

Q. That you have checked the records. A. Yes, I think they show that, and so that check must have gotten to me in some other way.

By the Master:

Q. Mr. Ungerleider didn't live in Trenton, did he? A. No, he did not live in Trenton.

Q. I thought you mentioned some time ago that you sometimes saw him in Trenton. Did he come down for some special purpose? A. Yes, I think all of his near relatives

live in Trenton, he grew up in Trenton, his sister lived in Trenton, and his nephews, a number of them, live in Trenton, he has a nephew who is really my physician, lives in Trenton, and he was down there more or less frequently.

By Mr. Thiess:

Q. Judge Davis, isn't it possible that Mrs. Davis might have taken the four thousand dollars that she withdrew from the deposit vault, and took it down to Mr. Ungerleider to get this check? A. No, that is not possible—oh, it is possible, I should correct what I said, it is possible, but it is not a fact. 3530

Mr. Harris: It would have been possible.

By Mr. Thiess:

Q. Now, isn't it also a fact, Judge Davis, that the Lewis loan was without interest? A. Yes.

Q. And the loan to your cousin Stokley carried eight per cent.? A. That is right. That seems funny,——

Q. It does. A. —but Lewis was a dealer in scrap iron and in tires, and, oh, for a number of years I had gotten all my tires from Lewis at cost, I met him when I was in the Legislature, and he would go out West and buy up a lot of tires, some mismatches and odd sizes, at a very reduced rate, 3531 and I would get my tires from him at cost, and he was dealing in scrap iron, he would get me a little motor, or engine, or something of that kind, or box of bolts that he had bought at some sale, and while he didn't pay me anything in money, I didn't charge him interest for those loans.

Mr. Harris: Now, Mr. Thiess, the letter of Judge Davis to Mr. Stokley of March 10, 1936, to which you have just referred, is marked as Amici Exhibit 94?

Mr. Neuman: That is right.

Mr. Thiess: That is the way I remember.

By Mr. Thiess:

Q. Now, is there any written evidence of this loan that you made to your cousin Stokley of four thousand dollars? A. Nothing that I know except the check itself and the letter which I wrote, the release of mortgages and the deeds which he gave me.

Q. And what was your oral agreement with Mr. Stokley respecting this loan? A. That when the money was repaid the property would be reconveyed to him?

Q. And—— A. As it will be.

3533 Q. And was there any agreement between you and Mr. Ungerleider as to the payment of interest—— A. No.

Q. —on the four thousand dollars? A. No agreement whatever.

Q. And did you give Mr. Ungerleider a note with respect to this—— A. No.

Q. —four thousand? A. I did not.

Q. No evidence of this indebtedness whatsoever except the check, the certified check, that you got from Mr. Ungerleider? A. That is right.

By Mr. Harris:

3534 Q. As a matter of curiosity, how much has been repaid, if any, on the four thousand dollar loan? A. I stated yesterday that all the money I had paid——

Q. No, no, I mean by Mr. Stokley. A. Oh.

Q. The four thousand dollar loan that you made to Stokley. A. Something over three thousand dollars.

Q. And interest, or including interest? A. Well, I haven't charged that to interest, that is all he has paid. I thought he was paying enough principal, and I probably, when he pays the principal, will figure up the interest at some rate less than eight per cent.

By Mr. Thiess:

Q. Judge Davis, did you have any agreement with Mr. Stokley as to when this money was to be repaid? A. No, I had no agreement with him, as I recall it, as to when it would be paid, but Mr. Stokley is a very optimistic man and he thought he would be able to pay Kaufman's loan and my loan all within three years.

Q. But there was no definite agreement between you and him, oral or otherwise, exactly when payment should be made—— A. No.

Q. —on this four thousand dollars? A. There was not. 3536

Q. Now, I don't know whether I did ask you this question, but I want to have the record show; did you make any arrangements with Mr. Ungerleider to pay interest on this four thousand dollar loan? A. No, you have asked that, and I stated I did not. Interest wasn't mentioned.

I might add right here that Mr. Ungerleider is a very good friend of mine and has been for twenty-five years, and a large hearted, fine man, and he and I will have no difficulty about interest, but nothing was said about it, either on this loan or on the other loan.

Q. Now, when you received these payments from Mr. Stokley on this four thousand dollar loan, did you return them to Mr. Ungerleider? A. No, I did not. All that I have 3537 paid Mr. Ungerleider is contained in the statement which I gave you.

The Master: Have you got that statement there? May I see it?

Mr. Neuman: The Ungerleider statement? This is the Ungerleider statement, and this is the Stokley statement (indicating).

Mr. Thiess: I should like to put that in.

Mr. Harris: Let's put the Ungerleider statement in.

3538 *J. Warren Davis—For Amici Curiae—Direct*

Mr. Thiess: That is what I want to put in. I am going to put them both—

The Master: This is the Ungerleider statement, is it?

Mr. von Holst: Yes.

The Witness: Those are the payments that I have made to Mr. Ungerleider. I paid for my home thirteen thousand and some dollars. I have been offered eighty thousand for it, at one time, when real estate was very high. I have it up now for sale and when I can get a sale, why, I will be able to—we have outgrown the need for the home, my daughter is married and one of my sons is married, the other is in the Army, Mrs. Davis and I are there alone, and so when I sell the home the balance will be paid to him.

3539

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 112 the statement produced by Judge Davis referring to the payments made by Charles Stokley on account of $4,000.00 loaned to him on March 10, 1936; and as Amici Exhibit 113 the schedule of payments by J. W. Davis to Mr. Ungerleider, on the loans which he made from Mr. Ungerleider, covering a period from May 20, 1938 to May 18, 1942.

3540

Mr. Harris: In order that there may at no future time be any misunderstanding, there were certain pencil ticks and footings made on this Exhibit 113 which have been erased or partially erased, and let it appear that those were made as a matter of convenience and erased or attempted to be erased by counsel, by Mr. Neuman, counsel for Amici. I do not want someone at some future time making an argument based on mutilation or erasures.

(Statement entitled "Payments made by Charles L. Stokley on account of $4000.00 loaned

him on March 10, 1936 by J. Warren Davis" was marked Amici Exhibit 112.)

(Statement entitled "Schedule of Payments J. W. Davis Loans" was marked Amici Exhibit 113.)

The Witness: I think I should make this statement, as I recall it. I do not recall exactly what is on there, but there is a payment of fourteen hundred and a payment of fifteen hundred dollars on there, I think on there. They were payments made by Mrs. 3542
Davis to Mr. Ungerleider on margin accounts which she had gotten from him.

The Master: I suggest that Amici Exhibit 113 ought to be a little more definitely described. It simply says "Schedule of Payments J. W. Davis Loans", not stating to whom the payments were made.

Mr. Harris: I think Mr. Thiess described it in offering it.

The Master: I assume they were all made to Mr. Ungerleider.

The Witness: All of them were made to Mr. Ungerleider.

Mr. Harris: And as I recall——

3543

The Witness: And I have produced the checks in all but eight, I think; that is, the first six were paid in cash, and I didn't produce the checks for the fourteen and fifteen hundred loan, because they were checks made, or payments made on Mr. Ungerleider's check out of a stock account Mrs. Davis had with him.

By Mr. Harris:

Q. And the last item of some seventeen thousand dollars was the cash surrender value—— A. Of certain insurance policies.

Q. —of the policies which you had assigned to him as security? A. That is right.

Q. Now, as I understand, the payments shown on this schedule, and which Mr. Neuman stated yesterday, and I verified, aggregate approximately twenty-five thousand dollars, were made on account of principal and interest, if any, of an indebtedness which originally was approximately thirty-seven thousand dollars, plus the four thousand dollars which you have described today, and on that you made no allocation on your books as against principal or interest, or as against one debt or the other, and you don't know how
3545 Mr. Ungerleider has allocated these payments? A. That is correct.

By Mr. Thiess:

Q. Judge Davis, I would like to ask you whether at the time that you made this four thousand dollar loan to your cousin Stokley whether you asked Mr. Ungerleider to make this loan directly to Mr. Stokley, rather than through you. A. No, I did not. Q. Have you any reason why you did not do this and follow the same procedure that was followed in the Kaufman loan? A. No, no reason why. I though he would rather loan it to me than he would to Stokley.

3546 Q. And for what reason was that? A. Because of my close friendship with him, that was more of a friendly transaction. The business—the loan between Kaufman and Stokley was a pure business transaction.

Q. I now call your attention to a letter dated April 28——

Mr. Thiess: Well, I believe these are all letters that he produced.

Mr. Neuman: That is right.

Mr. Thiess: Well, then, I now offer them in evidence. I wish to offer in evidence as Amici Exhibit

114 a letter dated April 28, 1936, from J. Warren Davis to Mr. Stokley.

By Mr. Thiess:

Q. That is correct, is it not? The letter is not signed, so I am calling your attention to it. A. That is a copy of a letter which I wrote to Stokley, and this letter Mr. Thiess, refers to the satisfaction of mortgage and releases of contract of the Eustis Packing Company, which I cannot find. I would like to know in whose possession it is. Do you know anything about it? Have you seen it?

3548

Mr. Thiess: We have a certified copy.

The Witness: From whom?

Mr. Thiess: The Clerk.

The Witness: Down in——

Mr. Thiess: The Clerk in Florida.

The Witness: Oh, well, it has been handed around, all my papers, to so many people I couldn't find it. I would like to know who has it.

By Mr. Thiess:

Q. Judge Davis, in all of these letters which you have produced which are carbon copies of letters that you sent out, these carbon copies are not signed? A. No, they are not, 3549
but all of the carbon copies which I produced were sent out —though not signed by me, were written and sent by me.

Mr. von Holst: That is, the originals were.

By Mr. Thiess:

Q. The originals? A. The originals of which these are copies.

By the Master:

Q. And the originals were signed by you, I presume? A. Yes.

3550 *J. Warren Davis—For Amici Curiae—Direct*

Q. And they were all to Charles L. Stokley if not otherwise indicated? A. No, I think some of them——

Mr. Harris: This particular one.

The Witness: All that I produced under this——

Mr. Thiess: All I produce now are.

The Witness: —particular paragraph.

The Master: You just said Mr. Stokley; I thought it might be better to have it indicated clearly that it was Charles L. Stokley, if that is the fact.

Mr. Thiess: That is right, that is correct.

3551 The Witness: I think all I produced under this paragraph of the subpoena were sent to Stokley.

Mr. Thiess: That is correct. I think it would be well to introduce all these letters together under the same exhibit number.

The Witness: That is right, fasten them together.

Mr. Thiess: And I will include in that exhibit number the letter from Judge Davis to Charles L. Stokley under date of March 15, 1937; letter from Judge Davis to his cousin Stokley, addressing him "Dear Charlie", under date of March 23, 1937; a longhand letter from "Charlie" Stokley to Judge Davis, addressing him as "Dear Judge", under date of

3552 3/25/37, noted in pencil,——

By Mr. Thiess:

Q. Is that correct, Judge Davis? A. Well, that letter came from my—just the date, I do not know the date of it. How did you fix the date?

Mr. Thiess: That was on there when we got it.

Mr. Neuman: But it was pinned to this (indicating).

Mr. Thiess: It was pinned to this letter—indicating a letter which I included in the exhibit—

from Judge Davis addressed to "Dear Charlie", his cousin Stokley, under date of March 29, 1937.

The Witness: Is that pencil or ink? Pencil, isn't it?

Mr. Thiess: That looks like pencil to me.

The Witness: That is correct, but I don't know how it got on there, but I have no doubt it is correct.

Mr. von Holst: Better mark each one, Mr. Reporter, and then we can pin them together. Mark them the same exhibit number.

(The following letters were marked Amici Exhibit 114: 3554

Copy of letter dated April 28, 1936, from Judge Davis to Mr. Charles L. Stokley.

Copy of letter dated March 15, 1937, from Judge Davis to Mr. Charles L. Stokley.

Copy of letter dated March 23, 1937, from Judge Davis to Mr. Charles L. Stokley.

Letter with pencil date of 3/25/37, from Mr. Stokley to Judge Davis.

Copy of letter dated March 29, 1937, from Judge Davis to Mr. Stokley.) 3555

The Master: May I ask a question in connection with these letters? I notice in the letter of April 28th Judge Davis speaks of the satisfaction of mortgage and releases of contract of the Eustis Packing Company. That would seem to suggest that there was a mortgage on that property and not merely a picking contract.

The Witness: I was under the impression, Mr. White, that it was a mortgage, but about that I may be mistaken. It was a lien, but I thought it was a

mortgage, but whatever it was I received, I do not now have.

By Mr. Thiess:

Q. Judge Davis, did you write any letters to your cousin Stokley asking him for payments?

Mr. Harris: Well, just a minute, you just offered letters in evidence in which he asked for payments. They speak for themselves.

Mr. Thiess: Well, other than the ones he has pro-

3557 duced here. A. I might. I do not recall.

By Mr. Thiess:

Q. I call your attention to a letter under date of June 18, 1936,——

Mr. Harris: That is earlier.

Mr. Thiess: I understand.

By Mr. Thiess:

Q. —from your cousin, Charlie, to "Dear Judge". Do you remember receiving that letter?

3558 (The witness examined the letter.)

Mr. McCullough: What is that, Mr. Thiess?

Mr. Thiess: That is Government Exhibit 131.

A. Yes, I think I received this letter, and if it is not in those files—I thought it was in those files,——

By Mr. Thiess:

Q. What I am—— A. —my recollection is that I received this letter, and I think it is in those files.

Q. Well, now,—— A. It was inadvertently left out if it isn't in there.

Q. I would like to—— A. That is my recollection.

Q. I would like to ask you whether you have the letter to which this letter of June 18, 1936, which I have just called to your attention, is a reply. A. I think I do not have it unless it is in those papers there.

Q. We were not able to find it. A. Well, unless it is in those papers I think I do not have it, because I made a careful search of all that I had, and I think I do not have it.

Q. Do you have any recollection of the contents of that letter to which this letter of June 18, 1936, is a reply? A. No, I do not have any independent recollection of it, Mr. Thiess. 3560

Mr. Thiess: I would like to offer in evidence as Amici Exhibit 115 the letter from Charles Stokley to Judge Davis, addressing him "Dear Judge", under date of June 18, 1936.

(Photostatic copy of letter dated June 18, 1936, from Mr. Stokley to Judge Davis, was marked Amici Exhibit 115.)

By Mr. Thiess:

Q. Now, I call your attention to a letter dated July 6, 1936, from your cousin, Charles Stokley, to "Dear Judge". 3561 Do you remember receiving that letter?

(The witness examined the letter.)

A. I think I received that letter.

By Mr. Thiess:

Q. Do you have the letter to which this letter of July, 1936, is a reply? A. Not unless it is in that bunch, Mr. Thiess.

Q. It isn't there. A. It isn't there?

Q. Not that we could find. A. Well, I have made a thorough search and brought all the letters I can. I will make another search and see if I have it, but I have given you all that I could find.

Q. At the present time do you have any independent recollection of what was in the letter that you wrote to Mr. Stokley, to which this letter of July 6th, 1936 that I call to your attention is a reply? A. No, I do not have. My recollection is that, at this time, it was the same year, just two or three months after I had made the loan, I wasn't asking him for loans at that time—for money at that time.

3563

Mr. Thiess: I would like to offer this letter—I beg your pardon, I didn't want to interrupt you.

The Witness: I wouldn't say definitely that I did not, but I have no recollection of doing it, and I think the probabilities are that I did not.

Mr. Thiess: I would like to offer this letter of July 6, 1936, from Charlie Stokley to "Dear Judge", Judge Davis, in evidence, as Amici Exhibit 116.

(Photostatic copy of letter dated July 6, 1936, from Mr. Stokley to Judge Davis was marked Amici Exhibit 116.)

3564

The Witness: Did I produce this letter?

Mr. Thiess: No, we weren't able to find that one, either.

The Witness: Where did you get this letter?

Mr. Thiess: They were introduced in the trial as exhibits. This is Exhibit 130.

(Discussion off the record.)

By Mr. Thiess:

Q. Now, is there anything to show, Judge Davis, that you held this property conveyed to you by Mr. Stokley as security and not as the owner in fee?

Mr. Harris: Certainly, the letter in evidence this morning.

A. Yes, the letter I wrote to him telling him that I would draw a contract agreeing to reconvey when the money had been paid.

By Mr. Thiess:

Q. But there is nothing of record to show—— A. No.
Q. —that? A. No, there is not?

Mr. Harris: Just a minute, now, let's see that letter, will you, please? 3566

(Discussion off the record.)

Mr. Harris: Exhibit 114, from Judge Davis to Mr. Stokley, reads as follows——

Mr. O'Mara: Give the date. There are several 114's.

Mr. Harris: This is one dated April 28, 1936:

"I received the Satisfaction of mortgage and Releases of Contract of the Eustis Packing Company which have been cancelled of record. Thank you for sending them to me.

"I have been in the Jefferson Hospital in Philadelphia for ten days with gall-bladder trouble but 3567
am at home now and coming along nicely. I am dictating this letter at home and so do not have the deeds for the property which you have conveyed to me as collateral security for the $4000.00 here, but as soon as I go back to the office I will write the contract, agreeing to return the property to you upon the payment of the money."

By Mr. Thiess:

Q. Now, as I understand it, Judge Davis, you also received a diamond—— A. Yes.

Q. ——as security from Mr. Stokley? A. Yes.

Q. What is this diamond worth, do you know? A. I only know what he told me, and I have opened the diamond, or the papers in which it was sent only once, and that was when I received it, and then put it back.

Q. What kind of papers was it sent in? A. Oh, it was sent in a box.

Q. Oh, no writing with it? A. No—well, I say no, I may have to modify that.

Q. All right. A. Subject to correction, my memory is that there was a receipt in that box with the diamond from
3569 the person from whom he purported to buy it, for thirty-five hundred dollars, and he told me that was what he paid for it.

Q. Well, now, do you know what the date of that receipt was? A. It was some time, two or three months, as I recall it, after the payment had been made—I mean, after the check had been sent.

Q. After the four thousand dollar check had been sent? A. Yes, that is right. He told me at that time he would give me the security, and his fruit hadn't turned out as he thought, and anyway, he sent that on later, and it is in the original package in which it was sent.

3570 Q. Now, —— A. Whether or not the date is on the package I do not know. I went to the post office registry department in our post office and tried to ascertain, but they couldn't help me with it.

By Mr. Harris:

Q. Is it addressed to you? A. Addressed to me.

Q. In Mr. Stokley's handwriting? A. That is my recollection.

Q. Is that still on the box? A. Yes, that is my recollection, it is in the original package—either his handwriting or his wife's. To tell you the truth, I don't know which is

which. His wife writes his letters, sometimes he writes his letters, and I don't know which is which, but it is one of them.

By Mr. Thiess:

Q. Then, if I understand your testimony correctly, you received that diamond some time in the summer of 1936? A. That is my recollection.

Q. And is there anything to show, any writing to show that this diamond that you have in your box was put up as security by Mr. Stokley and is not your property? A. That I do not recall, whether or not I have given anything to him I 3572
do not recall; but I know it, he knows it, his wife knows it, Mrs. Davis knows it, and whether there is any writing to that effect I cannot now recall.

Mr. Harris: Did you subpoena the production of this diamond?

Mr. Thiess: No.

The Witness: Well, I mentioned the diamond in the letter—I mean, in my reply to the subpoena, for the reason it said "other securities," and I regarded that as a security and have so stated there, which will be of record, a record that it is held as security.

By Mr. Thiess: 3573

Q. Did you at any time discuss with Mr. Stokley or Mr. Kaufman or anyone else the fact that it would be advisable to liquidate this Eustis lien on the Stokley property? A. I cannot say that I did not, but I have no recollection of it now. I might have done so, but I do not recall.

Q. And you wouldn't remember with whom, or when, or where? A. I do not recall doing it at all, with anybody.

Q. I see. A. I might have done it, but I do not recall, because, frankly, I felt perfectly secure—I do—because I

have received over two thousand dollars and I have got that diamond.

Q. Now, —— A. And I thought it was a diamond ring, I spoke of it for a while as a diamond ring, but I think it is not a diamond ring, I think it is a diamond.

Q. Now, isn't it the fact, Judge Davis, that this release by the Eustis Company removed a loan by said company—I mean, removed a lien by said company from some of the property that was deeded by Mr. Stokley to Mr. Kaufman, and thereby gave clear title to this property so deeded to Mr. Kaufman? A. If so, I do not know it, and do not be-
3575 lieve it to be a fact.

Q. Well, isn't it a fact that any property deeded to Mr. Kaufman which was not included in the foreclosure by the Town of Mount Dora was subject to this Eustis lien? Do you know that? A. Will you read the question again?

Mr. Harris: Well, now, just a minute,——

The Witness: Wait, just let me hear that question.

Mr. Harris: Yes.

(The question was repeated by the reporter as follows:

3576 "Q. Well, isn't it a fact that any property deeded to Mr. Kaufman which was not included in the foreclosure by the Town of Mount Dora was subject to this Eustis lien? Do you know that?")

Mr. Harris: Just a minute. I would like to interpose an objection. I think we are asking the Judge now to give something that would be better given of record. His recollection might be faulty, and if we have any records, let's produce them, and if there is any question about them, let's then ask the Judge about the records, but he cannot know

whether or not that is so unless—except as a matter of general impression—unless you show him papers, and he has already testified as a matter of recollection that it did not cover any properties that were conveyed to Mr. Kaufman. Now, if he is mistaken about that, that may be a legal question that he did not investigate at the time. My own impression is that Judge Davis is correct. We are looking at the fruit picking agreements, or packing agreements, now, and our first impression is that they cover only property in Lake County and that they did not cover these properties against which Judge Davis made a 3578
loan—I mean, against which Mr. Kaufman made a loan, but I think that we are all interested in knowing the facts rather than trying to trick the Judge into making some answer in which he may be mistaken.

Mr. Thiess: I am not trying to trick the Judge into making any answer. He could have said he didn't know.

The Witness: I will answer the question if you want me to.

Mr. Thiess: Judge Davis said he would answer the question if you wanted him to.

The Master: Well, it seems to me, Mr. Thiess, 3579
that the question asks the Judge——

Mr. Thiess: I am not interested——

The Master: —to decide——

Mr. Thiess: —in having the question answered,——

Mr. Harris: Very well.

Mr. Thiess: —if that is the way you feel about it.

Mr. Harris: No, what I felt is that instead of waiting until you write a brief, or make an argument, and say, "Now, here Judge Davis lied when he said

it did not cover those properties", you ought to now produce the documents on which you will make such a claim, let me look at them and let Judge Davis look at them, and we will clear that up.

Mr. Thiess: If Judge Davis didn't know, he could have said so.

Mr. Harris: He said previously, on two occasions, that it was his impression that they did not cover the same properties.

Mr. Thiess: He could have so answered this question.

3581 Mr. Harris: Well, he would have, I assume, if I hadn't interrupted, but I thought instead of asking him that three or four times and getting the same answer each time, and getting him committed about something on which his recollection may not be clear, although he said if it was so he didn't know it at the time, we ought to get the papers out and clear it up. We are interested only in the facts, and so is the Master.

Mr. Thiess: So are we.

The Witness: I would like to answer that question, if there is no objection.

3582 Mr. Harris: Certainly, I have no objection. I withdraw my objection.

The Master: The objection is withdrawn. Very well.

The Witness: My information was, and is, and my belief is that none of the properties conveyed to Mr. Kaufman are covered by the properties that were conveyed to me, and I think—answering Mr. Thiess's question—that the other properties of Stokley are not— which were not conveyed to me, and so forth—are not covered by Mr. Kaufman's conveyance. Stokley has property in Orlando, a number of lots, and they were conveyed to me also as additional

security for this loan, and I am very positive that they are not covered by Stokley's conveyance—I mean, by the Kaufman conveyance, and I should be most surprised to find that any of the property which was conveyed to me as security for this loan are covered by Stokley's conveyance to Kaufman or the conveyance of the Town to Kaufman.

Mr. Harris: There still has not been produced, Mr. Thiess, the satisfaction of mortgage, or release of mortgage and satisfaction of lien which were executed upon the payment of the four thousand dollars which Judge Davis advanced to Mr. Stokley. Now, I think 3584
we ought to find out what those documents were and whether they cover properties in Orange County, because as I recall the only properties conveyed to Mr. Kaufman were in Orange County, weren't they?

(Discussion off the record.)

Mr. Harris: The properties conveyed to Kaufman were in Lake County, I mean, ——

The Witness: In Lake County.

Mr. Harris: —and the properties that were conveyed to Judge Davis were largely in Orange County.

The Witness: Most all in Orange County. I think 3585
there are two little groves, of an acre or two acres, or something like that, around a packing company near there, which are in Lake County.

Mr. Harris: Are those the ones in which you claim there is an overlapping?

Mr. Neuman: Those are in Lake County, where there was an overlap of title. Mr. Duncan identified the first contract with the Eustis Company and pointed out that at least one of the parcels was related or was the same as a parcel which was conveyed by the Town of Mount Dora to Kaufman. Later on

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lly identified the release of that agreement which was given to Judge Davis at the time that Judge Davis loaned the four thousand dollars.

Mr. Harris: And that was a fraction of an acre, as I recall it, isn't that true?

The Master: Is that already in evidence?

Mr. Thiess: That is all in evidence.

Mr. Behrens: I haven't been able to find any release of the Orange County properties. I found a release on Lake but not Orange County. It was Orange County property in the original Eustis agreement that
3587 was released, and Judge Davis got the release. Now, where is it? That is the question.

The Witness: If you have had Stokley here, or if you have not and are going to have him, I wish you would ask him that question, because I think he will be as much surprised as anybody else.

Mr. Harris: Well, in any event, these little properties, if they were covered by this fruit picking agreement and were also among the properties conveyed by you, they were just fractions of acres, as I recall, up in the corner of a plat that this man from Florida made, and they bore no substantial relation either to
3588 the security given to you or the security given to Mr. Kaufman, and consequently could not have been matters that were taken into consideration. Of course, the whole implication here is that you were making this deal with Stokley to make Kaufman's title good, that is all, and it is absurd.

The Master: Well, as I understand it, the releases referred to in this letter, of the mortgage which was held by the Eustis Packing Company and the picking agreement held by them, have both been offered in evidence.

Mr. McCullough: No, sir.

Mr. von Holst: They have as to Lake County.

Mr. McCullough: Not as to Orange County.

Mr. von Holst: As to Orange County there has been no offer.

Mr. Harris: That is the whole point.

The Master: Do you have that contract or release?

Mr. Neuman: For Orange County?

Mr. Harris: They may have it, but they haven't produced it.

Mr. von Holst: We can get it very readily.

Mr. Poore: I think we have it.

Mr. Thies: If we have it, let's produce it. 3590

The Witness: As I understand it, Mr. White, Kaufman secured a title insurance policy in 1935 showing that all the property which was conveyed to him was free and clear of encumbrance.

Mr. Harris: Only the Mount Dora property, only that conveyed by the Town of Mount Dora.

The Witness: By the Town?

Mr. Harris: The additional security, no application was made for insurance.

The Master: And that policy has been offered in evidence?

Mr. Harris: And that policy is in evidence. 3591

The Witness: Oh, yes.

The Master: Well, gentlemen, if there is any confusion here I think it could be cleared up later. I think we are wasting a little time over this. I suggest you go ahead with your examination.

The Witness: I agree, we are wasting time, Mr. White, I agree with you.

Mr. Harris: In the interest of not wasting time later on, let me ask that if counsel on the other side propose to make any argument to the effect that Judge Davis was clearing up the title for Mr. Kaufman, that

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before they make that, they put in all of the contracts in evidence, and mortgages, and picking agreements, releases, and so on.

By Mr. Thiess:

Q. Judge Davis, can you tell me when you first learned that Morgan Kaufman was an attorney for the Universal Oil Products Comany? A. I am not sure whether or no, I learned that before the trial.

3593 *By Mr. Harris:*

Q. Before which trial? A. The trial of myself and Kaufman in court down here, either the first or second trial, I do not know which.

Q. That is, the criminal trial? A. Yes. I remember on one of those trials that Mr. Gahagan presented to me a number of cases, and among them was this Root Refining case, and subject to what I said, because it is in the record; I remarked that I never heard that Mr. Kaufman was connected with this company, or case, or words to that effect, and if I had heard of it before I have no recollection of it.

By Mr. Thiess:

3594

Q. Did you know, Judge Davis, that David Kaufman was in the case, or interested but not of record, of Morgenthau versus Mifflin Chemical Corporation, reported in 93 Fed. 2nd, page 82, when that case was pending on appeal and before final decision? A. What is the case?

Q. It is Morgenthau versus Mifflin Chemical Corporation. A. No, I never heard that David Kaufman was ever interested in any case, so far as my memory goes, that came before us, except one case that arose in and around Scranton, Pennsylvania, and what the name of that case was, I do not know.

Mr. Harris: Well, might that have been this case, Mr. Thiess?

By the Master:

Q. Is David Kaufman a member of the bar? A. Yes.

Q. He is? A. Yes, he appeared in that case with a gentleman whose name I have forgotten now, in Scranton.

By Mr. Thiess:

Q. Was that a case in which Morgan Kaufman was of record—David Kaufman was of record? A. I think it was. It seems to me that was a tax case, but I can't recall. Will 3596
you give me that case again, please?

Q. I will be very glad to: Morgenthau versus Mifflin Chemical Corporation, 92 Fed. 2nd, page 82.

Mr. Harris: Was that a case that was heard by a Court when Judge Davis was sitting?

Mr. Thiess: He didn't sit on this bench, on the bench that heard this case, no.

Mr. Harris: I see.

The Witness: Who were counsel in it? Well, I know nothing about the case, don't recall the name of the case, even. That is why I asked.

Mr. Thiess: I now wish to offer in evidence as 3597
Amici Exhibit 117 a letter produced by Judge Davis, under date of March 3, 1936, coming from Folder 3 which he produced, a letter from Judge Davis to "Dear Charlie".

(Carbon copy of letter dated March 3, 1936, from Judge Davis to Mr. Stokley, was marked Amici Exhibit 117.)

By Mr. Thiess:

Q. This is a carbon copy of a letter—— A. Yes.

Q. —that you sent to your cousin,—— A. Yes, it is.

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Q. —Mr. Charles Stokley? Judge Davis, do you know William Fox? A. Yes.

Q. Did you know Robert E. Steedle, who was a Referee in Bankruptcy in Atlantic City, New Jersey? A. Yes.

Q. When did you first meet Mr. Steedle? A. Personally, I first met him, as I recall it, the latter part of April, and whatever year it was.

Q. '36? A. Whatever year it is.

Q. In Atlantic City? A. Yes.

Q. Do you know the occasion, as to how you happened to
3599 meet him at that time? A. Yes.

Q. Will you state it, please? A. I had been down to Atlantic City that day and was on my way home, and when I passed the Traymore Hotel, and going down to the President Hotel, for my car, Morgan Kaufman just came out, and spoke to me and said a few words, and asked me where I was going, and I told him, and he said he was going around to see Mr. Steedle to make some return of something, asked me to get in and ride around with him, saying that he was only going to be there a few minutes and he would drop me off at the President Hotel, where my car was parked.

Q. Now, at this time did you have a conversation with
3600 Mr. Steedle? A. Yes.

Q. And Mr. Kaufman talked to Mr. Steedle in your presence? A. Yes.

Q. Do you remember that Morgan Kaufman in your presence advised Mr. Steedle that Kaufman had heard of the Fox bankruptcy case being filed and that Kaufman was sure that Steedle would get the Fox case? A. No, he did not make such a statement in my presence.

Q. Did Morgan Kaufman in your presence state to Mr. Steedle that there would be real money in the Fox case for Steedle? A. No.

Q. Did Morgan Kaufman at any time tell Mr. Steedle that he, Kaufman, knew Mr. Becker, who represented Mr. Fox; and that Mr. Becker was a very capable lawyer? A. No.

Q. Did you at that time tell Mr. Steedle that you had read Mr. Fox's book and that you found it very interesting, and that Fox must be a remarkable character? A. No, I did not.

Q. Did you at that time tell Steedle that you had the use of Chris Lindbeck's boat, and that you were going to take Mr. Steedle fishing that summer? A. Not at that time.

Q. Did you tell him that at some subsequent time? A. 3602
Yes.

Q. But you don't remember telling him at that time? A. I did not tell him at that time.

Q. Now, June 1st, 1936, did you not call Mr. Steedle on the telephone to invite him to go fishing with you on the Mullica River—I think is the way you pronounce it? A. Mullica River.

Q. Mullica River, M-u-l-l-i-c-a River—the next day? Do you remember that? A. No, I do not.

Q. Then you do not remember Mr. Steedle saying that it was impossible for him to go on that particular occasion? A. No, that did not take place. I can tell you when I did 3603
make the agreement with him to go fishing.

Q. Well, did you go fishing with Mr. Steedle that summer? A. Yes.

Q. When was that? A. I think it was in July. It might have been the first of August.

Q. July of that year? A. Of that year.

Q. 1936. A. July, or first of August, somewhere along there.

Q. How was this fishing trip arranged? A. Sometime after I met Mr. Steedle, as I told you—and, by the way, with regard to my meeting him there, I sat out in the car, did not

go in to Mr. Steedle's home, Mr. Kaufman went in to deliver a book, I think it was, or something of that kind and he had been in there several minutes, I do not know just how long, maybe five or six or eight or ten minutes, and when he came out Mr. Steedle came with him, and Mr. Kaufman introduced him, and we talked a few minutes, and somehow the conversation ran to our sons, and he said his son wanted to go to Princeton, I told him my son wanted to go to Princeton, and we talked a few minutes about that.

I was troubled then with prostate trouble, and had to go to the toilet very often, and I asked him if it was convenient
3605 for me to go to his bathroom.

He said, yes, he took me in, I think Kaufman stayed out, I am not sure, I think he did, he took me into his room and to the stairway leading from his sitting room and pointed up and said, "Judge, the bathroom is right at the head of the stairway." I went up there and used the bathroom, came down, I don't think I sat down, and spoke a word or two to him, went out and left.

Q. Now, you were going to tell us how this fishing trip that you went on with Mr. Steedle—— A. Yes.

Q. —was arranged. A. Sometime later, in the summer, Mr. Steedle, when he was in Philadelphia, called at my
3606 chambers. Whether or not we had met or talked about Paxson Deeter I do not know, but he stated, either then or before, that he was very well acquainted with Paxson Deeter, he was a classmate of mine and a very good, warm friend, he said that he had been in John C. Bell's office and was Mr. Deeter's personal secretary or stenographer, in Bell's office, and we talked on, and I told him that I was going down to Atlantic City in a few days, a short time, fishing, and made some remark about it, I don't know whether he said he liked fishing, or whether I asked him, and, anyway, as a result of that conversation he was invited to go fishing with me, and at the appointed time I went down and met Mr. Steedle and we went out on Mr. Lindback's boat.

Mr. Lindback is a very warm friend of mine, a member of the board of trustees of Bucknell University, owns, Mr. White, the Abbott Dairies, here.

The Master: Yes, he is the president of it.

The Witness: Yes, and he owns it. I think all except its qualifying shares. You may know better than I do.

The Master: Well, it may be.

The Witness: That is my information.

The Master: I presume he owns the largest number. 3608

The Witness: And I used to go fishing, that is, when I was down in Miami Beach, he had his boat down there, small boat, about, I would say, thirty feet long, and he said to me, he knew I was very fond of fishing, he said, "Yes, any time that you want to use my boat and Captain—I keep it at Atlantic City—in going fishing, you may do so, except on Thursdays. That is the date I reserve to myself and my friends that I take out."

By the way, he has taken me once or twice on those Thursdays.

I said, "All right."

I told Mr. Steedle that, and we went fishing. 3609

By Mr. Thiess:

Q. Now, do you remember who was present on this fishing trip? A. Mr. Steedle was present, the Captain was present, a nephew of mine was present—whether or not one of my sons was present I am not able to say, but my messenger, as I recall it, was present.

Q. Wasn't John B. Haskell present? A. That is a nephew, Haskett.

Q. Haskett? A. Yes.

Q. And this nephew, what was his business? A. He has a garage and a service station.

Q. Where? A. Columbus, New Jersey.

Q. Did he have it at that time? A. Yes.

Q. And does he still have it? A. Yes.

The Master: What was the date of this?

Mr. Thiess: The fishing trip?

The Master: Yes.

Mr. von Holst: According to the witness, it was July, 1936.

3611 The Witness: Somewhere in July or August, early August, I do not know which.

The Master: 1936?

Mr. von Holst: Yes.

The Witness: I have no date to fix it.

By Mr. Thiess:

Q. Now, on this occasion that you went fishing with Mr. Steedle did you say to him, "Wouldn't you like to be a Judge?" A. I do not recall that I said those words, but I might have said those words.

Q. Do you remember any conversation with respect to this, that you could give us the substance of? A. There was
3612 talk about his being a judge. I asked him if he would like to be advanced to a judge sometime, and he said, yes, he would like that very much, and as I recall it, we then had a Republican president, and I said that I would like to see Judge Avis advance to my position if and when I resigned, and perhaps there would be an opportunity for him,——

Mr. Harris: I don't think Mr. Roosevelt would agree with that.

The Witness: No, we didn't have a Republican president. No, we didn't, but unless we had a Republican president there would be not very much likelihood that Judge Avis would be advanced to my posi-

tion—because he is a prince of a judge and a fine man.

By Mr. Thiess:

Q. Judge Davis,—— A. That is in substance what I told him, but the language I cannot recall at all. That has been six years ago.

Q. —did you see Judge Buffington and David Kaufman in Atlantic City on the day on which you met Mr. Steedle? A. No, if they were there I do not know it, and I think I never heard of it.

3614

Q. Did you at that time tell Mr. Steedle about Mr. Kaufman's ability to advise in the buying of stocks and bonds, and that you would speak to him and have him make some money for him, for Mr. Steedle? Do you remember that? A. I think some of what you say is true, but some is untrue.

Q. Well, can you differentiate between it? A. Yes, he asked me on that trip, as I recall it—spoke of Morgan Kaufman and asked me something about him, who he was, it seems that Morgan Kaufman had contacted him before the day he returned that book, if it was a book, and I told him who he was and that I understood he was a very wealthy man and a wise dealer in stocks and bonds, that is, made a lot of money that way.

3615

I did not tell him that I would ask him to make money for him, or to invest for him, or advise how.

Q. Now, during this fishing trip did you discuss the Fox bankruptcy case with Mr. Steedle and did he explain to you the reasons for refusing to appoint your brother, J. Mercer Davis, as attorney for the receiver? A. No, he did not.

By Mr. Harris:

Q. That subject wasn't mentioned? That subject wasn't mentioned? A. I saw Steedle several times, and on some

one of those occasions Steedle said there was some interesting question of law that had come up in the Fox bankruptcy case—I knew about the bankruptcy case there because the papers had been full of it—and asked me just what my thought was about it, and I told him that question had never come before our court that I recalled, but my thought would be so and so, and asked him what he had held, and I think it was along the line that he had held, or was going to hold, or something.

By Mr. Thiess:

3617. Q. Do you know what that proposition of law was? A. No, I do not know now.

Q. You have no recollection? A. No, I do not recall. I have had so many propositions of law brought up to me and discussed and discarded and affirmed, and all that, what that was I do not know, because it was to me just another proposition of law.

Q. I might be able to refresh your recollection, as to whether that was a question as to whether the claims of the creditors should be tried first. A. If it was, I do not recall it.

Mr. Harris: Before what?

3618 Mr. Thiess: Before considering the question of insolvency.

The Witness: I don't think that that was a proposition of law, because, as I understand it, that is not a proposition of law, that is a matter of discretion with the court, and what he told—asked me about, was some proposition of law.

By Mr. Thiess:

Q. Now, did you and Mr. Steedle go on a second fishing trip? A. I can't recall whether or not we did. I recall we discussed a second trip, but whether or not we went on

that I wouldn't say. I might or might not be mistaken—just as I was about my secretary, had been to Florida with me only one winter—but if so, I have no distinct recollection of that.

Q. Do you recollect, Judge Davis, that you dined with Mr. Steedle at the Knife and Fork in Atlantic City? A. I had either lunch or dinner, I do not recall which, with Mr. Steedle at some restaurant right back of the President Hotel. I presume that is the Knife and Fork. That is the only time that I ever had anything to eat with him except one Sunday, when his family and my daughter were present.

Q. Well, on this first occasion that I call to your attention, do you not recollect that you dined on the balcony of that restaurant? A. No, I do not recall where we dined. 3620

Q. Have you any recollection that after the dinner you took a ride on the boardwalk? A. Not that day, because I came home right away after that, that day—took a ride on the boardwalk on the Sunday that I had dinner with him at one of the hotels.

Q. But you don't remember doing that at this other time,— A. I did not,—

Q. —the first time? A. —because my car was there and I came home.

Q. During this first meeting, that dinner meeting, did you not say to Mr. Steedle that you thought there was something in the contention of the bankrupt, Fox, that the claims of creditors should be tried out first? Do you remember that? A. No, I did not say that. 3621

Q. And before leaving him, that evening, did you say to Mr. Steedle, "I hope to hear that you are working on the hearings of the claims in the Fox bankruptcy case." A. No, I did not. It was a matter of indifference to me what he did in that case.

Q. Did you thereafter send to Mr. Steedle and his family an invitation to your daughter's wedding, which was to be

held on August 22, 1936? A. I gave whoever was sending out the invitations his name to send, although——

Q. And do you know whether it was sent? A. I assume that it was.

Q. Prior to the wedding you invited and took Mr. and Mrs. Steedle and their son to dinner, that was the second dinner which you have—the time you dined with Mr. Steedle, that you referred to? A. I think that was the first one, I think—I think the other time was subsequent to that, I think it was, but I am not sure about that.

Q. Well, now,—— A. But there were those two oc-
3623 casions.

Q. Well, now, do you know whether both of those occasions occurred prior to the wedding of your daughter? A. I know one of them occurred prior to the wedding of my daughter. That was the dinner in which she was present with Steedle's family and son. The other one, I do not know whether it was subsequent or before the dinner on the Sunday.

Q. Did Mr. Steedle to your knowledge attend the wedding of your daughter? A. Well, I have heard that he was there, but it was a pretty busy day with me, and I can't recall as to whether or not I saw him. I may have seen him or I might not, but I think he was there, because I heard Mrs. Davis or
3624 someone say that he was there.

Q. Now, have you any recollection that on or about October 4, 1936 you invited Mr. Steedle to dine with you at the Knife and Fork Inn at Atlantic City? A. That was the time that we were talking about. I don't know the date. I never invited him to dine with me but one time, and that was the time we were there.

Q. Well, that was as of August, was it not, the one that we have previously talked——A. As to the date, Mr. Thiess, I can't say, I can't tell you.

Q. Well, then, you have no recollection of dining with Mr. Steedle, inviting Mr. Steedle to dine, subsequent to the

time that you dined with him when his wife was present? A. Well, I wouldn't say whether when I dined with him on that Sunday, when his wife was present, was before or after the time we dined at the Knife and Fork.

Q. Well, do you remember that at any time that you dined with Mr. Steedle you knew that Mrs. Fox had been certified for contempt by Steedle in the Fox cases? A. I think she had not; at least, if she had I did not know it.

Q. To you remember dining with Mr. Steedle and he informing you that on the very day that he dined with you he had certified Herbert Leitstein, the Fox accountant, for contempt? A. I have no recollection that he ever spoke to me about that, nor when that was done, and I do not believe that he did. 3626

Q. Now, Judge, isn't it a fact that you met Steedle on five occasions, not including the day you saw him when he attended your daughter's wedding? A. I think I could count them for you. Whether there were four or five or six I do not recall. I met him on the day I met him with Kaufman.

I met him on the day that he came up to my chambers. That was the second time that I had seen him, and if he hadn't come into my chambers then I presume I would never have seen him again.

I met him on the day we went fishing. 3627

I met him on the day when we had lunch, or supper, whatever it was, at this restaurant.

By Mr. Harris:

Q. The Knife and Fork? A. Well, if it was the Knife and Fork, I don't know.

Q. I mean the one that has been referred to as the Knife and Fork. A. Yes, the Knife and Fork, that is four.

I might have seen him, but I have no recollection of it, at the wedding.

I now have no recollection of seeing him at another time, I might have done it, but I have no present recollection of it.

Q. Well, how about that time you dined with the family, you spoke of? A. Well, that was the Sunday.

Q. Oh, yes. A. I thought I included that.

Q. No, you didn't. A. Well, then, I intended to include that, that would be five, and if I saw him at the wedding that would be the sixth time that I had seen him.

By Mr. Thiess:

3629 Q. Now, Judge Davis, did you in the month of July, 1936, or at any other time, receive fifteen thousand dollars from Morgan Kaufman which had been provided by William Fox. A. No, I did not.

Q. Did you in the fall or winter of 1936 call William Fox and ask him to meet you at the Adelphia Hotel, in Philadelphia? A. I did not—one time he said, the other time he said he brought up fifteen thousand dollars in his hands?

Q. No. A. In the testimony.

Q. No. A. Well, one of those times he said he brought up fifteen thousand dollars in his hands and wrapped it in paper, a newspaper.

3630 Q. That is right. Well, do you remember at all being at the Adelphia Hotel in Philadelphia in the winter of 1936? A. I was at the Adelphia Hotel at least once a month or more for a long time. Unless I stayed over with Judge Buffington I would stay at the Adelphia Hotel, because it was a little more quiet than the hotel here, and whether or not I was there that winter, I have no recollection of any distinct occasion, but there was a card shown me in which I registered there, I don't know whether it was December or not, that was the only one that was produced, but there were dozens of cards produced that I had been at the hotel at other times than that.

Q. I show you a card, registration card of the Adelphia Hotel dated December 18, 1936. Does that registration card contain your signature?

(The witness examined the card.)

A. That is my signature.

By Mr. Thiess:

Q. And does that refresh your recollection that you were in Philadelphia at the Hotel Adelphia on that day? A. No, I have no independent recollection other than this, and you might take any one of the many cards that I signed there, 3632
and I wouldn't have any independent recollection as to the time otherwise than on the card. I was trying to look at the date of this.

Q. The date is on the back, Judge. A. Oh, December 18th —no, I have no independent recollection.

(Discussion off the record.)

The Master: This is the Adelphia Hotel?

Mr. Thiess: Yes.

The Witness: You might, Mr. Thiess, select most any time, winter or summer, and ask me if I was at the hotel in that winter or that summer, and you could find a card that I was there, except the early 3633
part, or a part of '37, after I had had an operation, why, I wasn't there.

Mr. Harris: Mr. Master, unless the other side are prepared to concede that that is true, I suggest that they have the files of the Adelphia Hotel examined and see whether or not Judge Davis's statement is true.

The Witness: All of those cards, or many of them, were in court.

Mr. Harris: Is that the only one you have?

Mr. Neuman: This is the only one that was introduced.

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Mr. Thiess: That is the only one we have.

Mr. Harris: I guess the United States Attorney can furnish others.

The Witness: That is the only one that the Government produced to dovetail in with——

Mr. Harris: Fox's story?

The Witness: —Fox's story, but Mr. Gray got many others.

Mr. Neuman: Then you have them.

The Witness: What is it?

Mr. Neuman: I say, then you have those other
3635 cards.

The Witness: No, I don't have them. He had them brought over by some representative of the hotel.

By Mr. Harris:

Q. Under subpoena? A. I assume so, I don't know just how.

Mr. Harris: Well, I think we ought to investigate that and see,——

The Witness: I told him what the facts were.

Mr. Harris: Unless Judge Davis's word is taken
3636 for that.

By the Master:

Q. Did you say you frequently spent the night at the Adelphia? A. Night and other times. I have been bothered, Mr. White, with heart trouble for quite a while, and if my heart was bothering me very much, if I was going to—I would go in and take two or three hours rest there, or if I was going out to attend some function here in the evening I would go there and take a nap in the afternoon, before I went out, and then many of the nights that I would spend here, I would spend there. I remember, Senator, when Ed

Grosscup died his son tried everywhere to get me, and finally found me, eleven o'clock at night, over at the Adelphia Hotel.

Mr. von Holst: If the Master please, I suggest that we read into the record Mr. Gray's statement appearing on 2552 of the second criminal trial, which shows the cards and the dates that he had, which Mr. Gray then had in court, and he read them into the record.

Mr. Harris: How many were there, quite a few?

Mr von Holst: Quite a few.

Mr. Harris: Well, I don't object to having that 3638
read.

The Witness: Well, I think that would be sufficient——

Mr. Thiess: I should think so.

The Witness: —to establish the fact.

Mr. von Holst: I read from page 2552 of the record of the criminal trial:

"Mr. Gray:——"

Mr. Harris: Second? Second trial?

Mr. von Holst: Yes, sir.

Mr. Harris: All right, go ahead.

Mr. von Holst: "It may be considered they have 3639
been examined by us, sir, and that I am reading into the record that which would be the witnesses' answer after the examination of the cards, that he was there on March 20, 1935, April 18, 1935, May 29, 1935, March 18, 1936, May 28, 1936, July 20, 1936, October 20, 1936, and then the date that has been given by the other case,"—I think it means the other side—"December 18, 1936—and I haven't among these cards any 1937 dates—January 6th, 1938, January 19, 1938, May 13, 1938, September 9, 1938, September 23, 1938, November 18, 1938; December 8, 1938, January 12, 1939, January 24, 1939, May 4, 1939, May 25, 1939,

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July 10, 1939, August 14, 1939, September 13, 1939, October 6, 1939."

Mr. Thiess: And we will offer this particular card.

Mr. Neuman: You don't have to, the date appears along with the others.

Mr. Thiess: Does that appear in there?

The Witness: Yes.

Mr. Thiess: Well, then, we don't have to offer it.

The Master: Well, does it now appear of record that Judge Davis was there on the 18th of December, 1936?

3641 Mr. von Holst: Yes, that is one of the dates read by Mr. Gray.

The Master: I thought he read only the other dates.

Mr. von Holst: No, he had a dash, and then he said, "This is the date given by the other side."

The Master: Oh, I see.

The Witness: And I might state that Mr. Fox said that he didn't know whether he met me—and you will find that in the testimony—at the Adelphia Hotel or the Benjamin Franklin Hotel.

By Mr. Thiess:

3642 Q. Did you in the fall or early winter of 1936 ask William Fox to loan you twelve thousand, five hundred dollars? A. No, I did not.

Q. Did you in the fall or early winter of 1936 receive from William Fox twelve thousand, five hundred dollars in cash, consisting of twelve one-thousand dollar bills, and five hundred dollars in currency of other denominations? A. No.

Q. In February, 1937, did either you or Mrs. Davis have in your possession or in your safety deposit box at least six one-thousand dollar bills? A. What date?

Q. February of 1937. A. Yes.

Q. It is a fact, is it not, that five of these bills were delivered by you to your daughter, Mary Firestone? A. Yes.

Q. Who deposited them at the St. Augustine Bank, for the purpose of making a loan in the amount of five thousand dollars to a Mrs. Page? A. Well, I wasn't with her, but I understand she did.

Q. Who handled the details of this Page mortgage, Judge Davis? You did, did you not? A. As far as I was concerned?

Q. Yes. A. So far as—I did.

Q. And it is a fact, is it not, that your daughter assigned 3644
the mortgage to Mrs. Davis in the spring of 1938? A. Yes, —well, sometime, I do not know just when that was.

Q. Well, we can show you that date. A. Yes, well, I think—I am not disputing it.

Q. All right, this assignment occurred before the first interest date? A. Well, I assume that it did.

Q. And you collected the first interest payment on this mortgage, did you not? A. I think I collected all of them.

Q. All of them? A. I think so.

Q. Now,—— A. Up to—go ahead.

Q. Can you tell me, Judge Davis, what you did with the six one-thousand dollar bills that you had? A. Five of them 3645
I gave to my daughter. The other one, I do not know what was done with that.

Q. Now, isn't it a fact, Judge Davis, that the sixth one-thousand dollar bill was deposited by you in the First National Bank of Miami in connection with an account opened in the name of J. W. and Marguerite G. Davis on February 19, 1937? A. No.

Q. That is not a fact? A. I will tell you what the fact was.

Q. All right. A. The fact is that we deposited one thousand dollars in the bank, I assume on the date that you mention, which I had taken down to Miami, thinking that

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I would have my operation, the prostate operation there in Miami, but I was advised against that by the doctor at the hotel. Whether that deposit of one thousand dollars was one of those bills or not, I have no present recollection. I tried to ascertain, but not very satisfactorily.

Q. When was it that you tried to ascertain whether that was the one-thousand dollar bill—— A. After this investigation started.

Q. Could you place that any more definitely? A. No, I have no data, but it was some time after it started, I wrote and asked about the account there and was notified that
3647 there was no such account. Then I wrote another letter and was likewise notified, as I recall it. Then I wrote to Mr. Ed Kumpf—K-u-m-p-f I think—president of the hotel, whom I had met—president of the bank, whom I had met in Florida, and told him that his clerks were mistaken, and asked him about the account, and then he dug up and found that there was an account there and there was a deposit such as I had told him about, and at that same time we had—took a box there, I had taken this diamond down, on the representation of Mr. Stokley that he would be able to pay off that year, he would be able to pay off this mortgage money of four thousand dollars, and I took that diamond
3648 down to hand back to him, and he wasn't ready when I was there, he thought he might be ready subsequently, and so I deposited that in a safety deposit box for safe keeping there.

Q. Was this the only thing you had in that safety deposit box? A. That is the only thing I had in that safety deposit box, and the next year, he wasn't making any progress, and we were down there, we took that diamond and brought it and put it in a Philadelphia box, where it has been ever since.

Q. Did you spend any time in Chicago, Judge Davis, in the spring of 1937? A. Was that the time that—no. I was there at the time that President Roosevelt was nominated. That would be in——

By Mr. Harris:

Q. '36? A. '36.

Mr. O'Mara: No.

By Mr. Thiess:

Q. I see, that wouldn't be in the spring of 1937? A. No.

Mr. O'Mara: He was nominated in Philadelphia in 1936, Judge Davis, and in Chicago in '32 and '40.

The Witness: When he was nominated the first time. 3650

Mr. O'Mara: '32.

The Witness: I do not recall being there in '37. I might have been, I don't recall.

By Mr. Thiess:

Q. Well, the reason—— A. I go through Chicago when I visit my sister, out in Wyoming, when she was alive, but whether or not I made a trip then I do not now recall, Mr. Thiess.

Q. Well, the reason I asked is, I was wondering why you indicated a change of address as of April 10, 1937 to the Palmer House, Chicago, Illinois, in the account which you 3651 had with the First National Bank of Miami. A. I didn't indicate any change of address. They got my account, or the account of Mrs. Davis and myself down there all mixed up with somebody in Chicago. That is why they said they couldn't find any account of Mrs. Davis and me, and made some charge against the deposit which we had made there, but subsequently straightened it out.

Q. Well, I show you—— A. If you find——

Q. I show you this—— A. —the original cards which we signed you will find that our address is given as Trenton, New Jersey.

Q. That is right, but the bank card shows this address. A. Yes, let me see the date of the bank card. What is the date of that, Mr. Thiess?

Q. I think it is given right there. A. What is that?

Q. Right here, 4-10-37. A. 4-10-37—that is January, February, March—April.

Q. Yes. A. So far as I know—well, so far as I know, as a matter of fact, I wasn't in Miami in April of 1937. I went to St. Augustine at the time that this mortgage was made, and to Mount Dora, and did not go south of there, and I did not go down there until the 12th or 13th, and so I never
3653 went to this bank except on two occasions, and one was when we opened the account, and the next was when we closed the account.

Q. And—— A. Now, I think you will find——

Q. —you closed the account in 1938? A. Well, whenever that was. Whenever it was closed, I was there, and whenever it was opened, I was there, and I think that was a year, they were a year apart, as I recall them. I may, Mr. Thiess, have some letters from the bank, if they have not been destroyed or lost, telling me of this mistake which has been made in charging or mixing the account up with somebody in Chicago, and apologizing for it, or words to that effect.
3654 If I have, and if you would like to see them——

Q. If you have, we would like to see them. A. Yes, but you can find that out from the bank, too.

Q. Well, all we had was—— A. Yes, well, you can find that out from the bank if you will write to the bank and ask them.

Q. Now, from whom did either you or Mrs. Davis receive the six one thousand dollar bills which were in your possession in February of 1937? A. From David Lewis.

Q. And will you tell how you happened to get those bills? A. David Lewis was a man that I had known for—ever since I was in the Senate, in 1912, New Jersey Senate, in

1912, and I had been making him loans for some considerable time, some small and some large. The first large loan that—I made him a loan, or in conjunction—well, a loan was, as I recall it, in '28, either '27 or '28, I forget which, of three thousand dollars, I drew that out of the savings account here in the Philadelphia bank, where I was getting more interest than I could in Trenton.

The next large loan that I made him——

By Mr. Harris:

Q. Who? 3656

Mr. Thiess: Lewis.

A. —I made in conjunction with Mrs. Davis, on January 3, 1933, we took—I took a thousand dollars, I think, out of my account, and she took around twenty-one hundred out of her account.

By Mr. Thiess:

Q. And in that particular transaction you loaned $3,095.35, did you not? A. I think that is the amount.

Q. And you withdrew, you and your wife both withdrew from your savings account in the Philadelphia Savings Fund 3657
Society so as to leave a balance for each of you of only five dollars, is that correct? A. That is right.

Q. All right, will you continue with your story? A. I have forgotten that was by check. I am mighty glad that it was, otherwise it would have been probably denied or suspicion cast on it.

The next loan that she made, alone, was in 19—as I recall it, November, of that same year, 1933, which was paid back early the next year.

Then we made some small loans, I had, to him, from time to time.

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Q. Have you finished this story? A. No, I haven't finished this story.

Q. All right. A. Small loans from time to time, and or shortly after March, 1936, Mrs. Davis loaned him forty-four hundred dollars. I loaned him at that time or just before that, or right after that, I cannot tell which, a thousand dollars. This she got from her safe deposit box.

In the same year, in September, she loaned him twenty-two hundred dollars.

The loan of forty-four hundred dollars was paid back sometime before July 10.

3659 Q. Of what year. A. Of that same year.

By Mr. Harris:

Q. What is that, '36? A. '36. He paid my thousand dollars, I think, at the same time.

He repaid the loan made in September just before election time, because I remember he spoke about the election, as to how it was going to go, and so forth.

When he made the payment of the twenty-seven hundred dollars which Mrs. Davis loaned him in November, 1933, it was made in small, soiled money, a fistfull of it, and she complained about it. When I gave him the next loan, large
3660 loan, I told him Mrs. Davis had objected to the small denominations or the—the soiled money which he had paid the other larger loan, and when he paid that back he came with four one-thousand dollar bills, and he gave me a thousand dollar bill, and he did likewise when he repaid the twenty-two hundred dollars.

By Mr. Thiess:

Q. Have you finished your story? A. Yes. I should probably—I should probably enlarge this.

Q. All right, go ahead. A. By saying that when I was first asked about these loans, because I didn't know they

were in question at all, I said I thought that they were made—and I thought that they were the repayments of the thirty-one hundred dollars and of the other loan, the amount of which I had forgotten, that was paid in cash—loaned in cash and repaid in cash, but there are letters of Mr. Lewis, two of them, in which he speaks of it, and asking for it. I thought it was those, but after thinking the thing over we concluded that it wasn't those dates, that we had made larger loans subsequent to that, and these were the last loans.

I then wrote to Mr. Harlan, John M. Harlan, of the firm 3662
of Elihu Root's old firm, and who was representing me in New York at that time, and told him that I was sure that we had been mistaken as to when those loans were made, and they were '34 and '35, I thought as late as that, and then Mrs. Davis found some letter, I think it was the letter about those loans, and we decided that it must be later, and then on September 3, 1939 the District Attorney called Mr. Harlan and myself over into his office——

Q. That was 1940, was it? A. 1940, you see how my memory goes as to dates, 1940—and said he had those five thousand-dollar bills, and so forth, and before he stated any connection that they could have had with Fox——

3663

By Mr. Neuman:

Q. July? A. July, whatever that date is.

Q. July 3, 1940. A.—I told him about the letter which I had written to Mr. Harlan, and Mr. Harlan was present, telling him I was mistaken, and that I had written to Mr. Harlan, and then I said, "I still think that those repayments were—and loans—were later than '34 and '35, they were in '35 and perhaps in '36, but I have no data," and then he told me about the connection with Fox, and he said, "Those bills were sent down in——", well, I have forgotten

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just what he said, you have the transcript of that, and he said, "What explanation have you of your former—of your testimony?"

I said, "Why, I have none, if what you say is true, but I have given you my best recollection," and I was going back in my recollection for, oh, some six, seven, eight or nine years, but was giving him my best recollection without any data and without any date, without knowing the significance of those bills, and to where they could be traced, and you can readily see how I might be mistaken, if your
3665 memory is like mine or like most people, when you ask somebody about dates, five, six, seven or eight years ago, when it occurred.

As a good illustration of that, I assume you have read the testimony of Mr. Littleton and Mr. Fulton as to what they said in promising Mr. Fox consideration, and they are just very opposed, and while Mr. Littleton says perhaps Mr. Fox—Mr. Fulton said, "Well, perhaps Mr. Littleton's recollection is better than mine," they were younger men, they hadn't reached that seventy-fifth year, they were younger men, in a transaction that had occurred not more than a year before. That is an illustration of how your mind will slip.

3666 Then I said, "I will do my best to find out more definitely, if there is any data that we have that will show it, then we——" —in the beginning I had told them, when they asked me about those loans, where I got them, I told them we got them from Mr. David Lewis, and each time they asked me, and the only mistake I made about them was as to the dates when I got them, and then we came home and searched for data and we thought the first time we made those loans we got them out of the safe deposit box in Philadelphia, then we came to Philadelphia—or, no, I had gotten the entrances into that box before, but had sent it over, sent them over to Mr. Harlan; and then we got those en-

trances and searched and found that after June 23, 1934, we had made only one entrance to that box, until March, 1936, and that was in February—no, in January of 1936, or, I guess '35, January, 1935, when Mrs. Davis took out a little money, when we were going to Florida in 1935, that was the 17th, I think, we took that money out, little money that she wanted to use down in Florida when she was there, I think we took that out on the day we left for Florida, and I think that that was the day we had the conference on the Root case, and we drove on from there to Mount Dora, and Judge Buffington knew that we were going, so 3668
he sent the assignment to me in——

By Mr. Thiess:

Q. What date is that, Judge? A. January 17th, 1935, that was the only date that we had been into that box from then until March 10th, and we knew that we had got the money out of the box and when it was put back, and that is how we determined the dates when we made that loan to Lewis. I was mistaken as to the dates, and that, as I recall, is the only mistake that I made in my testimony.

Q. Now, how many times did you change the dates as to the thousand dollar bills? 3669

Mr. Harris: You mean in his testimony?

Mr. Thiess: Yes.

A. Well, Mr. Gahagan said six, but I think he was mistaken as to that. I heard him say that to the jury. I think he was mistaken as to that, but the first time I said they were '33 and '34, I had reference to those two large loans then, and I thought those were the loans. I wrote to Mr. Lewis and told him that they were later, and I told—I don't mean Mr. Lewis—Mr. Harlan—that they were later, and I told the District Attorney that they were later, and then I made another change when I came to look up the box, I told the District Attorney that they were '35 and probably as late

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as '36, and then when we thought of the entrance and couldn't find any other data and thought of that for the first time, why, then we changed to the fact as to when we got them out of the box and when we put them back into the box. Now, if there are others than those three times I do not now recall, and this may be a lapse of memory, also.

By Mr. Harris:

Q. You mean on Mr. Gahagan's part? A. Well, mine or his, both—either.

3671

By Mr. Thiess:

Q. Did you change the amounts at all that you loaned? A. That I do not recall, but the amounts must have been changed, because after we found the letter asking for $2,725, which we gave him in the latter part of '33, those two did not aggregate six thousand and some dollars, and so I knew that the amounts—that amount wasn't correct and those weren't the two loans which I had reference to.

Q. And the amount was changed, was it not, subsequent to the time that you were told that the Government could trace the bills? A. That I cannot tell you now.

3672

Q. And— A. But we found the letters asking for the $2,725 after the investigation started, and you probably have a copy of those letters. Anyway, they have been in evidence, they were given to the Government, copies, photostatic copies.

Q. All right, while he is looking for those two letters— A. Yes, I wish you would go ahead.

Q. — Mr. Lewis is dead, is he not? A. Yes.

Q. And when did he die? A. He died, as I recall it, in September, 1937.

Q. Now, Judge Davis, you appeared before the Philadelphia Grand Jury in July—or, in March of 1941, did you not? A. I think it was March; Mr. Fulton phoned and asked me to come down and I came, whenever he asked

me, and I think it was the latter part of March, just what time I do not recall.

Q. At that time I would like to ask you whether you were not asked the following questions and did not give the following answers,——

Mr. Harris: Is this a statement to the District Attorney?

Mr. Thiess: Yes.

Mr. Neuman: This is the Philadelphia Grand Jury.

3674

By Mr. Thiess:

Q. "Q. Now I think, Judge, we might go——

Mr. Harris: Pardon me a minute, are these the minutes of the Grand Jury,——

Mr. Thiess: Yes.

Mr. Harris: ——or certain excerpts from them?

Mr. Thiess: These are the minutes of the Grand Jury.

Mr. Harris: In Philadelphia?

Mr. Thiess: Yes.

Mr. Harris: When were those obtained?

Mr. Neuman: They are in the disciplinary proceedings which we obtained from Mr. Rodebaugh. 3675

Mr. Harris: I see.

By Mr. Thiess:

Q. "Q. Now I think, Judge, we might go to your testimony: In your first statement, Judge, you recall, do you not, that you told the Department of Justice that these loans that had been made to Mr. Lewis and which were repaid by him with these thousand-dollar bills had been in 1933 and 1934? A. By the Department of Justice you mean Mr. Correa and Mr. ——

"Q. Mr. Correa and Mr. Gahagan. A. I think I did.

"Q. And then at a later date on July 3, 1940, they asked you to discuss that again, did they not—Mr. Cahill and Mr. Correa? A. I did not get that—will you read that?

"(Question read by the reporter.)

"The Witness: Yes, I think they did.

"By Mr. Fulton:

3677 "Q. And your attorney was present with you, was he not? A. Yes, I think that is right.

"Q. This is the second time that these matters were being brought up, and you had, I think, also been before a Grand Jury on another investigation for a few minutes, had you not? A. That may be. I do not now recall.

"Q. Well, you testified, I believe in New York? A. I testified before a Grand Jury but just when I cannot fix the date.

"Q. So this is really the second or third—second and possibly the third—occasion when you were asked to fix the date? A. I think it is the second, but I may 3678 be mistaken about it.

"Q. Now, you were asked this question."

Mr. Harris: Did you skip anything there?

Mr. Thiess: No, I did not.

By Mr. Thiess:

Q. "'Judge Davis, the matter specifically with respect to which your testimony is in conflict with the other evidence which our investigation has discovered is in the matter of five thousand dollars that was paid by your daughter, Mrs. Firestone, to Mrs. Page in connection with the mortgage transfer.

"'Now, you testified—and correct me if I misstate the testimony—you testified in general that you gave your daughter five one-thousand-dollar bills. Your daughter has testified that she deposited those five one-thousand-dollar bills in a bank in St. Augustine in Florida, and checks were subsequently issued against that account. Now, you and Mrs. Davis have both testified as to where these particular five one-thousand dollar bills came from. You testified and Mrs. Davis has corroborated your testimony in that respect, that those five bills came from one David Lewis, and as a result of two loan transactions which 3680
you and Mrs. Davis had with David Lewis. As I recall it, one of these transactions was—one of those transactions took place in the year 1933, and the other one in the year 1934, each being the repayment of a loan. You further testified and Mrs. Davis testified that these were the only thousand-dollar bills which you have had occasion to deal—that you could recall—and indeed Mrs. Davis said that she recalled the transaction because it was the only time she had ever handled thousand-dollar bills.

"'Now, the testimony of both of you has been that those thousand-dollar bills received from Lewis re- 3681
mained in Mrs. Davis's safe deposit box from the time they were received until the spring of 1937, when they were taken out and delivered to Mrs. Firestone, your daughter.

"'Is that substantially what your testimony has been on the subject?'

"'And then, Judge Davis, was not that the first time——

"A. Now read on what I said.

"Q. I will. Was not that the first time that you were notified that the government had a possible con-

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flict as to the exact date or year in which you received these five thousand-dollar bills? A. Yes.

"Q. That is the first time you had been told that we were troubled about the fact that it was in conflict with the other testimony? A. Yes, but up to that point you haven't told me what the date was or anything.

"Q. That is right; but at that point we had told you that your prior testimony was in conflict? A. Conflict with the other evidence?

"Q. With the testimony of other people. Now, 3683
your answer was:

'That is substantially what my testimony has been with this exception—I think it was substantially my testimony, but further investigation led me to think, as I have stated to Mr. Harlan——'

Your attorney?

"A. Yes.

"Q. '—right afterwards that these transactions with Mr. Lewis by which we received those bills—that one of them was in 1934 and the other was in 1935, rather than in 1933 and 1934.' A. Read on a little further.

"Q. 'Q. Now, is there any other change——'" 3684

Mr. McCullough: This is a quote?

Mr. Thiess: Yes.

Mr. Harris: This is all quotation from previous examination.

By Mr. Thiess:

"Q. 'Q. Now, is there any other change or amendment of your testimony or correction that you want to make on the basis of any further investigation that you made since first you testified? A. The first transaction in which we received those bills was in 1934 and

that was paid sometime in the fall of 1934. The next transaction was in 1935 and that was paid—I am not sure whether it was the latter part of 1935 or the early part of 1936.'"

Mr. McCullough: End of quotation?

Mr. Thiess: End of quotation.

By Mr. Thiess:

Q. "Q. Now, Judge, after you had been told your testimony was in conflict with the other evidence for the first time, you then changed the dates from 1933 and 1934 to the dates 1934 and 1935. A. Or 1936—or 1936. 3686

"Q. Now, at the very beginning you said 1934 or 1935? A. Yes.

"Q. Then when you were asked whether there was any other change you wanted to make, you made still another change by saying 1934 and 1935 and possibly early 1936, you using the term 'early'? A. Yes.

"Q. And the word 'possibly'? A. Yes.

"Q. Which brought it still further up, and at that time you were told, were you not. A. What the conflict was?

"Q. That the date 'early in 1936' was still too early? A. That is right. 3687

"Q. Because the actual date these bills were in the possession of Belle Fox was as late as May 7, 1936? A. That is right.

"Q. And it was after that, that you for the first time recalled this 1936 Election Day discussion with Mr. Lewis; is that correct? A. That is right.

"Q. And the July repayment by Mr. Lewis? A. Yes.

"Q. So then you changed your recollection from 1934 and 1935 or early 1936 to 1936 for both loans, and July and November for repayments? A. That is right.

"Q. Which is the fourth different statement with respect to the time. A. Third, isn't it?

"Q. No, let us see—there was 1933 and '4. A. That is one.

"Q. Then there was 1934 and '5; that is two; then there was 1934 and '5 or early 1936—that is three. A. Yes.

"Q. And now we have the fourth date which is July and November of 1936; is that correct? A. Yes, I think that is correct.

"Q. And you have no corrections of any kind or additions to make with respect to the Lewis transaction at this
3689 time? A. Other than what?

"Q. I mean, have you any other ones than what you have given us this morning? A. No.

"Q. And have you any further explanation of the Lewis transaction that you desire to make on your own behalf? A. Only this, Mr. Fulton, that I was giving you from memory purely, my best recollection as to the dates. There was no question about the fact that we got the money from him, because when we loaned it to Mr. Lewis there was no question about the fact we put it back in there when he repaid it. We have not modified that at all, and that remains just as we testified from the beginning. The only modification is
3690 as to the date, and I do not know how good your memory is as to the dates—mine are not. We had a discussion just last week as to when—some fellow—'When did you retire?'

'Why,' I said, 'in 1938.'

He said, 'I don't think it was in 1938; I think it was in 1939."

'No, you are mistaken; it was 1938.'

And not until we went and got the letter of retirement did I realize it was 1939 rather than 1938. And when——

"Q. Well now, Judge, we had a couple of other questions—— A. May I explain just a little further?

"Q. We will take it for granted that you have, as you say, times when you do not remember exactly. A. I do not remember the dates but I remember the facts."

Did you so testify?

A. That is substantially what I have said here this morning, and I so testified. There weren't six times, as Mr. Gahagan says.

Q. Now, I would also like to read to you from your testimony. A. Mr. Thiess and Mr. White, I have no objection to going into all of these transactions, or any transactions, 3692
but I would like to get away from here today, finally, and I do not see what materiality this has—because it is consuming time—on the issue which you are to find. If it has any materiality, why, that is perfectly all right, but I do not see where it is material or relevant.

The Master: Well, we have considered that, Judge Davis, and you will recall that I was directed to make an investigation of rather a sweeping character, by the Court of Appeals, and while I am endeavoring to apply the rules of evidence in a general way, I think that perhaps a little more liberality is required in this matter, and I have already ruled that evidence 3693
about this Fox transaction is material as bearing on the good faith with which Mr. Kaufman made the Stokley loan.

The Witness: Well, if that has any materiality and helps you to determine the fact, all right, I have testified as to——

The Master: Yes.

The Witness: —that loan, but this has nothing to do with the Kaufman loan,——

The Master: No, we understand that.

The Witness: —and it seems to me it is utterly immaterial. If there is anything about the Kaufman

loan, why, that is different, but this is just a question of dates, and all of that, and it seems to me——

The Master: Well, I think it bears on the general question as to——

Mr. Harris: Well, now, Your Honor, I should call your attention to this, so you can bear this in mind in connection with this testimony. The Government traced certain bills——

The Master: Yes.

Mr. Harris: —into this bank account. Those were
3695 not the bills which it is claimed—even the Government never claimed it—Mr. Kaufman received and turned over to Judge Davis. Those were the bills which it was claimed that Mr. Fox handed to Judge Davis directly.

The Master: I understand that.

Mr. Harris: The Government made no effort and made no claim that it had ever traced or could trace the bills which it was alleged that Mr. Kaufman had received from Fox and turned over to Judge Davis. Now, that being so, I don't see how all of this testimony which relates only to the bills which were claimed to have been turned over directly by Mr. Fox
3696 to Judge Davis can possibly have any value upon the bona fides of the Stokley loan made by Kaufman, because Kaufman is not directly or indirectly involved, even on the Government's own claim, in these bills which are the subject of this examination.

Now, I haven't said any more because I feel that so far as the Fox transaction is concerned we are innocent bystanders, and so I haven't said much although you know I have objected to it,—

The Master: Yes.

Mr. Harris —and have a continuing objection and exception to this testimony, but it does seem to me you ought to remember that

The Master: I understand that, and I do think that the testimony with regard to the transaction which took place directly between Mr. Fox and Judge Davis is somewhat more remote. At the same time, I think that now that Judge Davis is here we might receive the testimony, and if on further reflection I think it has no bearing on the issues I will exclude it.

The Witness: I am perfectly willing, Mr. White, to testify about this or anything else.

The Master: Yes, I understand.

The Witness: I haven't a thing to conceal. I 3698
made mistakes as to date, yes, have made them, and I will make them again, if I live to any length, and you are directed to make an investigation, as you say, rather sweeping, but it was to depend, in your conclusion upon material things, and not immaterial things. What date there was a storm in 1936 it seems to me doesn't have any more bearing on this than about these bills, but if I can get away—I am only——

Mr. Thiess: We are moving right along.

The Witness: I am only stating this because I want to get away today, finally.

The Master: Well, we will try to get through.

Mr. Thiess: We are doing it this way in order to 3699
expedite it.

The Witness: All right, I appreciate your job and what you are doing, your efforts to move on.

Mr. Thiess: I am.

The Witness: I didn't appreciate my friends' efforts last night to stop us, but you have got a new hold of it today, so we are going that much longer than we would have gone last night.

Mr. Thiess No, ——

The Witness: All right, I am consuming time now, I beg your pardon.

3700 *J. Warren Davis—For Amici Curiae—Direct*

By Mr. Thiess:

Q. I wish also to call your attention to the following questions and answers and ask you if you so testified,—A. May I ask you this, if it is something that I substantially testified to here, why, don't repeat it.

Q. This is what you say, and it is just very short. A. All right.

"Q. Judge Davis, we talked about this matter of amounts being different. A. Yes.

"Q. In your first testimony and in your second
3701 testimony you referred to amounts of about $3,000 each, and specifically in July of 1940, after you had been told that there was a discrepancy between your evidence and the other evidence, you still said that there were three bills involved in the repayment of each loan. A. Yes.

"Q. And now you make it four and two? A. Yes.

"Q. Now, you were quite definite that there were three in each loan before, and how do you account for being definite that it was three and three and now changing it to four and two? A. I thought it was three and three because I thought that the transactions in which I got the bills were those transactions
3702 in 1903—I mean '33 and '34, and I knew we had gotten only six bills, and I thought there were three each time, because one was definite we had—we loaned $3,095, and I thought the other one was three, but we got six bills, and we were very positive after thinking the thing over that we got only two at the last time. That was in November, 1936. Then our recollection, and also fortified by reasoning was we had the four, we thought—we had the four bills, and Mrs. Davis' recollection supplemented mine, and it was thought there was 4400, rather than three thousand and something."

And I read from pages 1821 to 1823. Did you so testify?

Mr. Harris: Of what, of the Philadelphia Grand Jury——

Mr. Thiess: Philadelphia Grand Jury.

Mr. Harris: —minutes?

A. I so testified.

Mr. Thiess: This is the Philadelphia Grand Jury testimony in the disciplinary record.

Mr. McCullough: But the pages are of the disciplinary record? 3704

Mr. Thiess: Disciplinary record.

By Mr. Thiess:

Q. Now, I wish to call your attention to the record in the second trial, page 2471, ——

Mr. Harris: Mr. Thiess, may I interrupt? Are you going to get through, now, in the course of another hour, possibly?

Mr. Thiess: I think we might.

Mr. Harris: Do you want to sit right through, then?

The Master: Oh, I think we better adjourn for lunch. We are getting all tired. Did you want to 3705
adjourn now?

Mr. Harris: Well, it is one o'clock.

The Master: Very well. You will finish inside of two hours?

Mr. Thiess: Oh, yes.

The Master: And you won't be more than thirty minutes?

Mr. Harris: I don't think I will have anything.

The Master: Very well, we will suspend until two o'clock.

(Recess, 12:55 until two o'clock P.M.)

3706 *J. Warren Davis—For Amici Curiae—Direct*

AFTER RECESS

Present: Counsel as before noted.

J. W. DAVIS, recalled.

Direct Examination (Continued.)

Mr. Thiess: Are we ready to go ahead?

The Master: Go ahead.

By Mr. Thiess:

3707 Q. When we adjourned this noon I was about to read to you, Judge Davis, from the second trial the following questions and answers, beginning on page 2471:

"Q. How many $1,000 bills in all did you get from Lewis, Judge Davis? A. There were seven.

"Q. And when you received them from Lewis what did you, yourself, do with them?

. . . . . .

"Q. You just take all seven. A. Taking the first transaction to which I referred?"

Mr. Harris: The answer was a question?

3708 Mr. Thiess: Answer, "Taking the first transaction to which I referred?"

Mr. Harris: "to which I referred?" is the question?

Mr. Thiess: That is part of his answer.

Mr. Harris: Here, there is a question mark after it, in my copy.

Mr. Thiess: But it is the answer.

Mr. von Holst: It is inflection.

Mr. Thiess: It is inflection.

By Mr. Thiess:

Q. "Q. Yes sir, A. I took them home to Mrs. Davis, showed them to her thinking that probably it would

3709

be convenient for us to come down to Philadelphia the following day and put them in. It was inconvenient and I put them, took them back to my chambers and put them into my strong box until there was a day mutually convenient for us both to come down to Philadelphia and put them into her safety deposit box.

"Q. How many bills were there on that occasion, sir? A. There were four that belonged to her and one that belonged to me.

"Q. So you showed her five $1,000 bills, is that what you say? A. That is my recollection. 3710

"Q. Did all of those five $1,000 bills go into her safe deposit box? A. Well, we put them into an envelope, or, I did, and she went down to put them into the safety deposit box which is in the basement and I waited up at the head of the steps for her to go down. I do not recall that I went down with her and waited at the desk until she made the transaction of putting them in, but whether I did or not, I cannot definitely recollect about that.

"Q. They went out of your possession anyway, didn't they? A. Yes, they did.

"Q. That is five of them. There were two more; you say there were seven? A. Yes. 3711

"Q. That was a subsequent transaction with Lewis? A. Yes.

"Q. And were these likewise given to Mrs. Davis? A. Yes.

"Q. And they also went out of your possession? A. In like manner.

"Q. Five of those seven $1,000 bills you say were used in connection with the Page transaction? A. Yes.

"Q. What happened to the other two? A. My recollection is, and I am not absolutely definite, that

when we went to Florida in '37 she took one of those down to Florida with which to pay for an operation which I anticipated having at that time and deposited that in a bank, and I was advised by the head of the sanitarium against an operation then, and so it was not used.

"Q. What happened to the other $1,000 bills? A. The other two went out at some time, I cannot recall——"

A. The other two?

3713 Q. The other two.

Mr. von Holst: No, the other—

Mr. Harris: The other two?

Mr. Thiess: The other two.

Mr. Neuman: It doesn't read that way.

Mr. Thiess: Yes, it does, "The other two went out——"

Mr. Neuman: The question doesn't.

Mr. Thiess: The answer does.

By Mr. Thiess:

Q. "A. The other two went out at some time, I cannot recall about when they were used.

3714 "Q. The other two, you say, Judge Davis? A. The other one.

"Q. You do recall there was a transaction in which a $1,000 bill would have been used by you, Judge Davis? A. I do not recall when that was used, and whether I used it as a $1,000 bill, or whether it was exchanged for money in smaller denominations when it was to be used. I have no distinct recollection about that.

"Q. Was it the usual thing for you to have $1,000 bills? A. Usual?

"Q. Yes, sir. A. No, sir, it was unusual."

Did you so testify, Judge Davis?

A. Yes.

Mr. Harris: Well, that is exactly what he has testified to here. I don't know why it was read.

By Mr. Thiess:

Q. Now, on July 3, 1940, you were interviewed by the District Attorney in New York, and did he tell you that the five one-thousand-dollar bills which your daughter had deposited in the Florida bank had been traced to Belle Fox?

A. Yes, he told me that. 3716

Q. Following your meeting of July 3, 1940, did you call, on the telephone, did you call Mr. Becker on the telephone?

A. Yes.

Q. That is, Mr. Fox's attorney? A. Yes.

Q. What did he tell you? A. I told him——

Q. Or, what did you tell him? Give us the subject of the conversation. A. —— in substance what the District Attorney had told me, and I asked him if he knew anything about it, or if Mr. Fox to his knowledge knew anything about it.

He said he did not know.

I said I would like to talk with Mr. Fox, and he said he would see if he could arrange an engagement or an appointment, or words to that effect. 3717

Q. Did you tell Mr. Becker that? A. That is my recollection.

Q. I see. Now, Judge Davis, can you tell us why you did not tell him that you wanted to see Belle Fox, instead of Mr. Fox? A. I thought he was the proper one to see.

Q. Well, hadn't the Government told you that the money was traced to Belle Fox? A. He said—he said it was traced to Belle Fox.

Q. And that was the reason for my question, why didn't you ask to see Belle Fox, rather than Mr. Fox?

Mr. Harris: He has answered that.

3718 *J. Warren Davis—For Amici Curiae—Direct*

A. I thought he was the head of the family and the dominant person in the family, and if there was any such thing he would know it, and, therefore, I thought it was the proper thing for me to see him, he knowing what I wanted to see him about,——

Q. At that time—— A. —because I had told Becker what I wanted to see him about, what the District Attorney had told me.

Q. At that time, as I understand it, you had not met either Belle Fox or Mr. Fox, is that correct? A. He said that I had met him at a fight, or was introduced to him at
3719 a fight, in Miami. I have no recollection of meeting him in the hurly-burly of a fight there, but if so, that was the only time that I had seen or met him before.

By Mr. Harris:

Q. Meaning William Fox? A. Yes, William Fox.

By Mr. Thiess:

Q. Now, did Mr. Becker say anything to you about arranging to meet Mr. Fox? A. No,—only what I have testified; see if he could arrange an appointment for us to meet.
3720 Q. And did Mr. Becker thereafter call you on the telephone and arrange for a meeting? A. Well, someone called me on the phone, I think it was the following Sunday, around one o'clock. As I understood Mr. Fox's testimony, it was not Mr. Becker, but some other person.

Q. And what was said with respect to this meeting? A. He said that Mr. Fox would see me that afternoon in a certain room in the Pennsylvania Hotel in New York.

Q. And did you go to New York to meet Mr. Fox at the Pennsylvania Hotel in the room designated? A. Yes.

Q. Now, what was the conversation that you had, the substance of the conversation you had with Mr. Fox on this

occasion? A. I told him in substance what the District Attorney had told me. I asked him if he knew anything about those bills, if he had ever had any dealings—David Lewis, if he knew Lewis, if he had ever had any dealings with him, either directly or indirectly, and he said that he did not recall of ever having known David Lewis, he had never had any dealings with him to his knowledge, but he would look into the matter and try to ascertain the facts and would let me know.

Q. Do you remember whether you told Mr. Fox on that occasion that the Government had the number of the bills? 3722
A. I do not——

Q. Numbers of the bills. A. I do not now recall whether I told him or not.

Q. Did you thereafter again meet Mr. Fox in September of 1940? A. No.

Q. Did you again see the District Attorney in New York, in September of 1940? A. Yes, I think I did. I knew Mrs. Davis—yes, we went back after I had traced the entrances to the box and had determined within our own minds what date we had gotten them out of these and when the loans were made and when they were repaid, Mr. Harlan and I went to see the District Attorney again, in some time in September. I had not seen Fox. 3723

Q. Go ahead, sir. A. In the meantime. I did not see him afterward. He did not call me, and I did not call him, because Mr. Harlan said, "Stay away from him."

By the Master:

Q. Mr. Harley? A. Harlan, John M. Harlan, my attorney in Philadelphia.

By Mr. Harris:

Q. In New York? A. In New York.

By the Master:

Q. What did you say he had done? I didn't quite get the last part of the sentence. A. He told me to stay away from Fox.

Q. Yes.

By Mr. Harris:

Q. Mr. Harlan is a leading lawyer, partner of the firm of Root, Clark, Buckner and Ballantine? A. Secured for me by George Wharton Pepper, here.

3725

By Mr. Thicss:

Q. It is a fact, is it not, Judge Davis, that you did not tell the District Attorney at the time that you saw him in September that you had seen Fox in July of 1940? A. I do not recall whether I told him. If I did I have no recollection of it, and I do not think I did.

Q. Yes. A. I think that I had seen Fox before that. I have no distinct recollection as to the time that I was in New York and made a call to Fox's attorneys. I think that was before September, but just exactly when it was, going back now seven or eight years, and I have no data to fix that,

3726 I think it was before,——

Q. Now,—— A. —but, anyway, I did not tell the District Attorney that, to my recollection.

Q. Now, when did you next meet Fox, do you remember that? A. Yes.

Q. When was it? A. On March 17th, 1941.

Q. And did you on that day register at the Governor Clinton Hotel, under the name of Herman Goldberg? A. Yes.

Q. Of Hoboken, New Jersey? A. Yes.

Q. And how did you come to register at the Governor Clinton Hotel under the name of Herman Goldberg? A. I

went over there to talk with Mr. Harlan, tell him that the investigation—to tell him the investigation was going on, as I understood it, in Philadelphia, the papers were full of it, and to ask him if he did not think that I had better get a Philadelphia attorney, and I went over, and—well, when I got there I phoned to Mr. Harlan, and he couldn't see me until three-thirty in the afternoon, his engagements were full up until that time.

I then called Mr. Kaufman and told him that the investigation was going on in Philadelphia, not knowing whether or not he had been informed, and he told me that Fox wanted to see—no, Becker, I think he said, wanted to see me, either 3728
Becker or Fox, but my recollection now is that he said that Becker wanted to see me, and I called Becker or his office, the office of Becker, he it was that answered, and said that Mr. Fox wanted to see me, and I told him of my engagement with Mr. Harlan, and he said, "Well, get a hotel—get a room in a hotel and register, and let me know what room it is, and," he said, "you better register under the name of Herman Goldberg, because somebody will be watching you or watching the records, and so register under that name."

By the Master:

Q. Who said this to you, Judge? A. Mr. Becker, the 3729
attorney of Mr. Fox; and I registered under that name, and phoned and told him that I had registered under that name, as he had directed.

I understood in the testimony that there came out that Fox had gone there and also registered under that name.

I went to see Mr. Becker and came—not Mr. Becker, Mr. Harlan—and came back to the hotel, and went up to the room, and shortly thereafter Mr. Fox came.

By Mr. Thiess:

Q. Did Mr. Becker say that the F. B. I. might be watching you, do you remember? A. Yes.

3730 *J. Warren Davis—For Amici Curiae—Direct*

Q. And—— A. He said that because—he said that the maid, if Mr. Fox went up there, probably wouldn't permit him to go into a room unless he could tell him who he was looking for, and I called back and told him that I had registered under the name as he had directed, or words to that effect, and the number of the room.

Q. Do you know why it was, Judge Davis, that you wanted to keep this meeting with Fox secret from the F. B. I.? A. Well, it wasn't I especially that wanted to keep it secret, yet I wasn't publishing the fact. I wanted to get at the facts as best I could, to know if Fox knew any-
3731 thing about these bills or about his daughter getting those bills, and if he had found out anything by the investigation that he said he would make, because he had not communicated with me from that day until March 17th, that is, the day that I met him in the Pensylvania Hotel.

Q. Well, now, Judge Davis, can you now give me the substance of the conversation between yourself and Fox on the occasion that you met in this room at the Governor Clinton Hotel? A. Well, I will try my best, I have told it twice, and I may not tell it just the way that I have told it in the record which you have.

Q. That is O. K., just give us the substance of it, that
3732 is all. A. But I will tell you the substance of it as best I can recall it.

He said that the District Attorney had called him down to his office—not the office, not the District Attorney, but Mr. Hugh A. Fulton, who was Special Assistant to the Attorney General, had called him down to the District Attorney's office in New York and had questioned him and asked him if he had given Morgan Kaufman any money for me, and if he knew me, and if he had ever given me any money, and he said his reply was that he had not given me any money, nor Morgan Kaufman any money, and that he did not know me, and I said to him, "Mr. Fox, you recall meeting me in the Pennsylvania Hotel last year some time."

He said, "Yes, but I told him I didn't know you, and," he said, "after I told him my story he said to me, 'Now, I do not believe this, you haven't told me the truth, you go home and think this thing over and come back and tell me the truth.'"

By Mr. Harris:

Q. Who said that to you?

By Mr. Thiess:

Q. Who said that. 3734

By Mr. Harris:

Q. Fox said that to you? A. Fox said that Mr. Fulton told him that.

Q. Oh, I see. A. And he said, "If I understand your question, it is this, for me to go home and think this thing over and make up some story and come back here and tell you, and you will believe it, but you don't believe what I have told you now, the truth."

He said, "No,——".

Q. That was Fox, to the District Attorney? A. Fox said he told the District Attorney that, and he said, "Oh, 3735 no," he said, "I don't mean that," he said, "I don't mean that." He said, "Do you know remember the Manton case?"

Q. Who said that, Fulton to Fox? A. Fulton, he said that Fulton told him, "Do you remember the Manton case?"

He said, "Yes, I remember something about it," or words to that effect.

He said, "Well, you know that in the Manton case we let everybody off but Manton, except some fellow would get some short sentence, but we let everybody off but Man-

ton. Now, if you want to save yourself and your family, you come back and tell me the story," and that was in substance what he said.

Q. What Fox—— A. And he said, "I felt that you ought to know just what I have said and what I told." I asked him again if he had found out anything about the bills, and then he said, "No."

By Mr. Thiess:

Q. Now, during this conversation did you ask Fox if your daughter exchanged the bills when she got ready—

3737 that Fox's daughter exchanged the bills when she got ready to use them? A. I think I did say something about—no, I didn't ask him if she exchanged bills when she got ready to use them, because I didn't know that she had gotten the bills. Fox testified, I think, that I asked him——

Q. Yes. A.—— if he exchanged thousand-dollar bills.

Q. That is right. Mr. von Holst just calls to my attention, and I think he is right, that you must have known on March 17th, when you had this meeting, that Belle Fox had gotten the bills. A. I knew that the District Attorney said she had gotten the bills.

Q. Yes.

3738 Mr. Harris: That wasn't your question. Your question was whether he knew that she had exchanged the bills.

Mr. Thiess: Yes, but in his answer he said, as I understood him he said he didn't know that she had——

Mr. Harris: That she had exchanged the bills.

Mr. Thiess: That she had gotten the bills, as I understand it.

Mr. von Holst: My only purpose in suggesting the question was that I didn't want it to appear that Judge Davis had said something that I didn't think he intended to.

3739

The Witness: Yes, thank you, Mr. von Holst.

Mr. Harris: I understood that you asked him whether she exchanged them, and I suppose by that you meant exchanged small bills for big bills.

Mr. Thiess: That was the purport of the question.

Mr. Harris: He didn't know that, he said he didn't know it.

Mr. Thiess: But we were trying to correct what we thought was a slip in his answer.

The Witness: Exactly.

3740

Mr. McCullough: What page is this?

Mr. Neuman: 1805.

The Witness: The District Attorney told me that they had traced those bills to Belle Fox by number, as I recall it. It turned out on the stand that they had not traced them to Belle Fox by number.

Mr. Thiess: Go ahead, I didn't want to interrupt you.

The Witness: The bank teller down there stated that they didn't have any numbers of the bills that they gave Belle Fox, he said that he gave Belle Fox, on the day after certain bills were sent from Philadelphia Federal Reserve down to the Atlantic City Bank, five one-thousand-dollar bills, that he distinctly remembered those five one-thousand-dollar bills.

3741

Upon cross-examination by Mr. Gray he admitted, he said, "I am mistaken, I don't remember whether I gave him one-thousand-dollar bills or whether I gave her other bills in other denominations, I don't remember."

And then, when it came up to the second trial he said that, "I was confused when I said that I re-

membered—I did not remember giving her one-thousand-dollar bills, I do now remember giving her one-thousand-dollar bills, five one-thousand-dollar bills," the numbers of which he did not know.

Upon cross-examination again by Mr. Gray the teller—he spoke to the teller, "With whom have you been talking about this?"

"Well," he said, "last Sunday morning I was in the Claridge Hotel and I went over all this testimony with Mr. Gahagan and one of the Assistant District Attorneys here, and my mind became clarified
3743 after talking with them."

"And you now remember?"

"Yes."

And upon further cross-examination, showing that he did remember, he said, "Well, I am mistaken, I don't remember," he said, "whether I gave her one-thousand-dollar bills or bills of other denominations."

You will find that, you have read it.

By Mr. Thiess:

Q. Now, I just would like to call your attention, Judge
3744 Davis, to—— A. But he told me—I beg your pardon for interrupting.

Q. Go ahead. A. But he told me, the District Attorney did, on July 3rd, and Mr. Harlan, that he had traced those by number to Belle Fox.

Q. May I now call your attention to the record of the second trial, page 1805, where this meeting with Fox is discussed, and ask you whether the following questions were asked you and you made the following answers:

The Master: Now, was that the meeting on March 17th?

Mr. Thiess: Yes.

The Master: At the Clinton Hotel?

Mr. Thiess: Yes.

The Witness: Anything different from what I have testified to? If not, let's not take time.

Mr. Thiess: It is different, and I want to see whether——

The Witness: All right, yes.

By Mr. Thiess:

Q. "Q. Just confine yourself to the interview. A. All right. 3746

"He said, 'No, I hadn't.'

"I asked him did his daughter exchange those bills, when she got ready to use them, for smaller bills, and he said, yes, she exchanged bills in Atlantic City and also in Philadelphia.

"I asked him if she gave him $1,000 bills, and if she gave those to him.

"He said no, she had never given him a bill exceeding $500."

A. Since you have called that to my attention I do recall so testifying.

Q. All right. A. And recall that as a fact, that he told 3747 me.

Q. And do you recall, Judge Davis, that Fox told you that he had told the District Attorney that he did not know you? A. Yes, I so testified a while ago.

Q. Did he ever look it? A. And I said that, "I met you last summer—whenever it was—in the Pennsylvania Hotel."

Q. Now, isn't it a fact at this meeting you and Mr. Fox agreed that you would state that you did not know each other? A. We didn't make any agreement to that effect at all. He said he told the District Attorney he didn't know me.

3748 *J. Warren Davis—For Amici Curiae—Direct*

Q. Before you met Mr. Fox at the Governor Clinton Hotel on March 17, 1941, did you notify any agent of the Government that you were going to this meeting? A. No.

Q. After you had this meeting did you inform the Government that you had met Mr. Fox on that occasion? A. No.

Mr. Thiess: 2037.

The Witness: Now, if I may enlarge that answer, with your permission, Mr. White, ——

The Master: Certainly.

The Witness: —when Mr. Fulton is ready to
3749 listen—Mr. Thiess.

Mr. Thiess: Go ahead.

The Witness: If you mean before Mr. Fulton called me down to Philadelphia and talked with me, I say no, but when he asked me—asked if Fox had told him—if that was true, I said, yes, and told him just what I have told you here.

By Mr. Thiess:

Q. Before you appeared before the Grand Jury in New York in April of 1940 isn't it a fact that your daughter called you on the telephone and told you she had been
3750 examined that day by the F. B. I. respecting the five one-thousand-dollar bills used to make the Page loan? A. Yes, she called me and said that she had been examined and the testimony had been written up, and asked me whether or not she should sign the testimony, said her husband had tried to get his lawyers in Providence, where they were then living, and that they were out, and he had phoned to Akron to get hold of the Company lawyer, and he was out, not available, and she called and asked me if she should sign the testimony and swear to it.

I said to her, "Yes, if you have told the exact truth as you know it and understand it, sign it."

Q. Now, —— A. And I am informed that she did.

Q. —you have earlier in your testimony this morning referred to your nephew, John B. Haskett, is it? A. That is right.

Q. He accompanied you on a fishing trip with Referee Steedle? A. Yes, on many of them.

Q. Did you ever have—— A. Not with Steedle, but many others.

Q. Did you ever have any business transactions with Mr. Haskett? A. Yes.

Q. Could you tell us what they were? A. Yes, I took a mortgage for my children on his property, on his home in 3752
Columbus, New Jersey, for fifteen hundred dollars. I signed or endorsed notes for him which he used in his business, in buying or building up his business, in the Security Trust Company, of Camden, New Jersey. I have loaned him a little money here and there, and he has loaned me some.

Q. Now, did this nephew of yours, John B. Haskett, inform you during the year 1938 that the buses of the Marts Bus Line had discontinued stopping at his station and purchasing gasoline from Haskett? A. Well, I knew that the buses were stopping at his place, service station, on the route from Wilkes-Barre to Atlantic City and return, and at the end of the season, why, when they stopped the running to 3753
Atlantic City, I knew that they hadn't purchased any more gasoline from him. Whether I knew from him when they stopped and when they discontinued their trips back and forth, I do not recall.

Q. Well, did you thereupon, on July 9th, 1938, write a letter to William Gallagher, one of the officials of the Marts Bus Line? A. That was not about the discontinuance, Mr. Thiess, of stopping there, that was the beginning of the stopping there.

Q. The beginning. They had never stopped there before? A. They hadn't stopped there before, and this was

754 *J. Warren Davis—For Amici Curiae—Direct*

the fact about that. Mr. Gallagher was—whom I knew perfectly well, and many times, and very friendly with, and whom I used to see when I went to Wilkes-Barre, Bucknell University having a Junior College there, and I was chairman of the board of trustees of that institution, said to me that, "We run buses from here down to Atlantic City, and I have stopped a number of times in your nephew's place. He has a very nice service station and garage there and I will have the buses stop there and get gasoline, if he sells it at the same price they would get it elsewhere", and I told him that was fine, and I would appreciate it, and he said,
755 "I will direct them to, but if they don't do it, why, you let me know."

I waited a sufficient time and I asked my nephew if they had stopped there, and he said, no.

Then I wrote him the letter which you refer to.

Q. And the letter which you wrote him is under date of July 9, 1938, from J. Warren Davis to Mr. William Gallagher, which I now show you?

(The witness examined the letter.)

A. Yes, that is it.

756 Mr. Thiess: I would like to offer this letter, identified by the witness, as Amici Exhibit 118.

(Photostatic copy of letter dated July 9, 1938, from J. Warren Davis to Mr. William Gallagher, and photostatic copy of envelope addressed to Mr. William Gallagher, were marked Amici Exhibit 118.)

By Mr. Thiess:

Q. Did your nephew——